

**FINAL AGENDA**

**REGULAR COUNCIL MEETING  
TUESDAY  
FEBRUARY 5, 2013**

**COUNCIL CHAMBERS  
211 WEST ASPEN AVENUE  
4:00 P.M. AND 6:00 P.M.**

**4:00 P.M. MEETING**

*Individual Items on the 4:00 p.m. meeting agenda may be postponed to the 6:00 p.m. meeting.*

**1. CALL TO ORDER****NOTICE OF OPTION TO RECESS INTO EXECUTIVE SESSION**

Pursuant to A.R.S. §38-431.02, notice is hereby given to the members of the City Council and to the general public that, at this regular meeting, the City Council may vote to go into executive session, which will not be open to the public, for legal advice and discussion with the City's attorneys for legal advice on any item listed on the following agenda, pursuant to A.R.S. §38-431.03(A)(3).

**2. ROLL CALL**

*NOTE: One or more Councilmembers may be in attendance telephonically or by other technological means.*

MAYOR NABOURS

VICE MAYOR EVANS

COUNCILMEMBER BAROTZ

COUNCILMEMBER BREWSTER

COUNCILMEMBER ORAVITS

COUNCILMEMBER OVERTON

COUNCILMEMBER WOODSON

**3. PLEDGE OF ALLEGIANCE AND MISSION STATEMENT****MISSION STATEMENT**

The mission of the City of Flagstaff is to protect and enhance the quality of life of its citizens.

**4. APPROVAL OF MINUTES FROM PREVIOUS MEETINGS**

- A. Consideration and Approval of Minutes:** Minutes of the January 15, 2013, Special Meeting (Executive Session); the January 15, 2013, Regular Council Meeting; the January 22, 2013, Special Budget Meeting; the January 29, 2013, Special Meeting (Executive Session); and the January 29, 2013, Special Work Session.

**RECOMMENDED ACTION:**

Approve the minutes [of the January 15, 2013, Special Meeting (Executive Session); the January 15, 2013, Regular Council Meeting; the January 22, 2013, Special Budget Meeting; the January 29, 2013, Special Meeting (Executive Session); and the January 29, 2013, Special Work Session] as amended and/or presented.

**5. PUBLIC PARTICIPATION**

Public Participation enables the public to address the Council about an item that is not on the agenda. Comments relating to items that are on the agenda will be taken at the time that the item is discussed. If you wish to address the Council at tonight's meeting, please complete a comment card and submit it to the recording clerk as soon as possible. Your name will be called when it is your turn to speak. You may address the Council up to three times throughout the meeting, including comments made during Public Participation. Please limit your remarks to three minutes per item to allow everyone an opportunity to speak. At the discretion of the Chair, ten or more persons present at the meeting and wishing to speak may appoint a representative who may have no more than fifteen minutes to speak.

**6. PROCLAMATIONS AND RECOGNITIONS**

A. Recognition of contributors to the Downtown Thermometer.

**7. APPOINTMENTS**

Pursuant to A.R.S. §38-431.02, notice is hereby given to the members of the City Council and to the general public that the City Council may vote to go into executive session, which will not be open to the public, for the purpose of discussing or considering employment, assignment, appointment, promotion, demotion, dismissal, salaries, disciplining or resignation of a public officer, appointee, or employee of any public body...., pursuant to A.R.S. §38-431.03(A)(1).

None submitted

**8. LIQUOR LICENSE PUBLIC HEARINGS**

None submitted

**9. CONSENT ITEMS**

**ALL MATTERS UNDER 'CONSENT AGENDA' ARE CONSIDERED BY THE CITY COUNCIL TO BE ROUTINE AND WILL BE ENACTED BY ONE MOTION APPROVING THE RECOMMENDATIONS LISTED ON THE AGENDA. UNLESS OTHERWISE INDICATED, EXPENDITURES APPROVED BY COUNCIL ARE BUDGETED ITEMS.**

- A. Consideration and Approval of Grant:** Arizona Department of Transportation Intergovernmental Agreement for the Pine Knoll Safe Routes to School Project.

**RECOMMENDED ACTION:**

Approve the Intergovernmental Agreement (IGA) with Arizona Department of Transportation Safe Routes to School Program for grant funds in the amount of \$400,128.00 and designate the Arizona Department of Transportation as the authorized agent for the City.

- B. Consideration and Approval of Purchase with Grant Funds:** Accept proposal from Parsons-Brinckerhoff for services to develop the FMPO (Flagstaff Metropolitan Planning Organization) Transportation Benefit Cost Analysis (BCA) tool at a cost not to exceed \$60,000.

**RECOMMENDED ACTION:**

Approve the proposal for services from Parsons Brinckerhoff in the amount of \$60,000 to be paid with federal Surface Transportation Program (STP) funds passed through the Arizona Department of Transportation (ADOT) to the Flagstaff Metropolitan Planning Agency.



**10. ROUTINE ITEMS**

- A. Consideration and Adoption of Ordinance No. 2013-03:** An ordinance of the Council of the City of Flagstaff, Coconino County, Arizona, approving and authorizing the sale and issuance of City of Flagstaff, Arizona General Obligation Bonds, Series 2013, in the total aggregate principal amount of not to exceed \$13,000,000 and all matters related thereto; prescribing certain terms and conditions of such bonds including the delegation to the Management Services Director of the City to designate the final principal amount, maturities, interest rates and yields and other matters with respect to such bonds; awarding a contract for the purchase of such bonds; ratifying the distribution of a Preliminary Official Statement and approving a final Official Statement. (\$3 million for Picture Canyon/2004; \$6.5 Million for Street Utility Bonds/2010; \$2 Million for Forest Health/2012)

**RECOMMENDED ACTION:**

- 1) Read Ordinance No. 2013-03 by title only for the first time on February 5, 2013.
- 2) Read Ordinance No. 2013-03 by title only for the second time on February 19, 2013.
- 3) Adopt Ordinance No. 2013-03 on February 19, 2013.

- B. Consideration and Adoption of Ordinance No. 2013-01:** An ordinance amending Title 8, Public Ways and Property, Chapter 8-03, Streets and Public Ways, Section 8-03-001-0004, Removal of Snow and Ice.

**RECOMMENDED ACTION:**

- 1) Read Ordinance No. 2013-01 by title only for the final time
- 2) Adopt Ordinance No. 2013-01

- C. Consideration and Adoption of Resolution No. 2013-01:** A resolution of the City Council of the City of Flagstaff, Coconino County, Arizona, repealing Resolution No. 2005-117, *Board and Commission Members' Handbook*, and adopting the *2013 Board and Commission Members' Handbook*.

**RECOMMENDED ACTION:**

- 1) Read Resolution No. 2013-01 by title only.
- 2) Adopt Resolution No. 2013-01.

- D. Consideration and Approval of an Agreement:** 2013 Rural Economic Development Grant Agreement from the Arizona Commerce Authority to the City of Flagstaff providing for a \$100,000 grant award for the expansion of Joy Cone Company.

**RECOMMENDED ACTION:**

Accept the award of the 2013 Rural Economic Development Grant Agreement in the amount of \$100,000 from the Arizona Commerce Authority for the expansion of Joy Cone Company.

- E. Consideration and Approval of an Agreement:** Sub-Recipient Agreement with Joy Cone Company providing for Joy Cone to receive a \$100,000 grant award from the Arizona Commerce Authority for the expansion of Joy Cone Company's Flagstaff facility, subject to City oversight and contingent upon Joy Cone's compliance with the grant and related conditions.

**RECOMMENDED ACTION:**

Approve Sub-Recipient Agreement with Joy Cone Company, and authorize the Mayor to execute the required documents.

**RECESS****6:00 P.M. MEETING****RECONVENE****NOTICE OF OPTION TO RECESS INTO EXECUTIVE SESSION**

Pursuant to A.R.S. §38-431.02, notice is hereby given to the members of the City Council and to the general public that, at this regular meeting, the City Council may vote to go into executive session, which will not be open to the public, for legal advice and discussion with the City's attorneys for legal advice on any item listed on the following agenda, pursuant to A.R.S. §38-431.03(A)(3).

**11. ROLL CALL**

*NOTE: One or more Councilmembers may be in attendance telephonically or by other technological means.*

MAYOR NABOURS

VICE MAYOR EVANS

COUNCILMEMBER BAROTZ

COUNCILMEMBER BREWSTER

COUNCILMEMBER ORAVITS

COUNCILMEMBER OVERTON

COUNCILMEMBER WOODSON

**12. CARRY OVER ITEMS FROM THE 4:00 P.M. AGENDA****13. PUBLIC HEARING ITEMS**

None submitted

**14. REGULAR AGENDA**

- A. Consideration of Resolution No. 2013-03:** A resolution of the Council of the City of Flagstaff, Arizona, supporting House Bill 2498, Property Tax Levy; Community Colleges (as requested by Coconino Community College for support of an amendment to state law via HB2498, permissive language allowing community college districts to ask voters for an increase to their primary property tax levy limit base after 20 years, but no more than 35 years, from the date they set their initial levy).

**RECOMMENDED ACTION:**

Should the Council wish to support HB2498:

- 1) Read Resolution No. 2013-03 by title only.
- 2) Adopt Resolution No. 2013-03.

- B. Consideration and Adoption of Resolution No. 2013-02:** A Resolution of the City Council of the City of Flagstaff designating the "2013 City of Flagstaff Parks and Recreation Organizational Master Plan" as a public record and adopting the 2013 City of Flagstaff Parks and Recreation Organizational Master Plan.

**RECOMMENDED ACTION:**

Should the Council wish to move forward with adoption of the 2013 City of Flagstaff Parks and Recreation Organizational Master Plan as presented:

- 1) Read Resolution No. 2013-02 by title only.
- 2) Adopt Resolution No. 2013-02.

- C. **Consideration of Proposals:** Public Works Municipal Services Center Property (aka Core Services Maintenance Facility).

**RECOMMENDED ACTION:**

Accept or reject proposals as submitted for Request for Proposals (RFP) 2012-49, property for a new Public Works Municipal Services Center

15. **DISCUSSION ITEMS**

- A. **Discussion and Possible Action Item:** Arizona Accord.

**RECOMMENDED ACTION:**

Council direction

- B. **Discussion and Possible Action Item:** City's Sister Cities Program and possible new city.

**RECOMMENDED ACTION:**

Council direction

16. **PUBLIC PARTICIPATION**

17. **INFORMATIONAL ITEMS AND REPORTS FROM COUNCIL AND STAFF, REQUESTS FOR FUTURE AGENDA ITEMS**

18. **ADJOURNMENT**

**CERTIFICATE OF POSTING OF NOTICE**

The undersigned hereby certifies that a copy of the foregoing notice was duly posted at Flagstaff City Hall on \_\_\_\_\_, at \_\_\_\_\_ a.m./p.m. in accordance with the statement filed by the City Council with the City Clerk.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Elizabeth A. Burke, MMC, City Clerk

## CITY OF FLAGSTAFF STAFF SUMMARY REPORT

**To:** The Honorable Mayor and Council  
**From:** Elizabeth A. Burke, City Clerk  
**Date:** 01/31/2013  
**Meeting Date:** 02/05/2013



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### TITLE

**Consideration and Approval of Minutes:** Minutes of the January 15, 2013, Special Meeting (Executive Session); the January 15, 2013, Regular Council Meeting; the January 22, 2013, Special Budget Meeting; the January 29, 2013, Special Meeting (Executive Session); and the January 29, 2013, Special Work Session.

### RECOMMENDED ACTION:

Approve the minutes [of the January 15, 2013, Special Meeting (Executive Session); the January 15, 2013, Regular Council Meeting; the January 22, 2013, Special Budget Meeting; the January 29, 2013, Special Meeting (Executive Session); and the January 29, 2013, Special Work Session] as amended and/or presented.

### INFORMATION

Attached are the minutes of the January 15, 2013, Special Meeting (Executive Session); the January 15, 2013, Regular Council Meeting; the January 22, 2013, Special Budget Meeting; the January 29, 2013, Special Meeting (Executive Session); and the January 29, 2013, Special Work Session for amendment and/or approval.

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**Attachments:** [CCSM.01152013.Minutes](#)  
[CCRM.01152013.Minutes](#)  
[CCSBM.01222013.Minutes](#)  
[CCSM.01292013.Minutes](#)  
[CCWS.01292013.Minutes](#)

**MINUTES OF THE SPECIAL MEETING (EXECUTIVE SESSION) OF THE FLAGSTAFF CITY COUNCIL HELD ON TUESDAY, JANUARY 15, 2013, IN THE STAFF CONFERENCE ROOM, SECOND FLOOR OF THE FLAGSTAFF CITY HALL, 211 WEST ASPEN, FLAGSTAFF, ARIZONA**

1. Call to Order

Mayor Nabours called the meeting to order at 3:32 p.m.

2. Roll Call

Present:

MAYOR NABOURS

VICE MAYOR EVANS

COUNCILMEMBER BAROTZ

COUNCILMEMBER BREWSTER

COUNCILMEMBER ORAVITS

COUNCILMEMBER OVERTON

COUNCILMEMBER WOODSON (excused)

Others present: City Manager Kevin Burke; City Attorney Rosemary Rosales.

3. Recess into Executive Session

**Councilmember Oravits moved to recess into Executive Session; seconded by Vice Mayor Evans; passed unanimously.** The Flagstaff City Council recessed into Executive Session at 3:32 p.m.

4. .EXECUTIVE SESSION:

A. Discussion or Consultation with the City's Attorney for legal advice; discussion or consultation with the attorneys of the public body in order to consider its position and instruct its attorneys regarding the public body's position regarding contracts that are the subject of negotiations, in pending or contemplated litigation or in settlement discussions conducted in order to avoid or resolve litigation; and discussions or consultations with designated representatives of the public body in order to consider its position and instruct its representatives regarding negotiations for the purchase, sale or lease of real property; pursuant to ARS §§38-431.03(A)(3), (4) and (7), respectively.

i. Core Services Maintenance Facility

5. Adjournment

The Flagstaff City Council reconvened into Open Session at 3:46 p.m. at which time the Special Meeting of January 15, 2013, adjourned.

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MAYOR

ATTEST:

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CITY CLERK

# MINUTES

REGULAR COUNCIL MEETING  
TUESDAY, JANUARY 15, 2013  
COUNCIL CHAMBERS  
211 WEST ASPEN AVENUE  
4:00 P.M. AND 6:00 P.M.

## 1. CALL TO ORDER

Mayor Nabours called the meeting to order at 4:00 p.m.

### NOTICE OF OPTION TO RECESS INTO EXECUTIVE SESSION

Pursuant to A.R.S. §38-431.02, notice is hereby given to the members of the City Council and to the general public that, at this regular meeting, the City Council may vote to go into executive session, which will not be open to the public, for legal advice and discussion with the City's attorneys for legal advice on any item listed on the following agenda, pursuant to A.R.S. §38-431.03(A)(3).

## 2. ROLL CALL

*NOTE: One or more Councilmembers may be in attendance telephonically or by other technological means.*

Present:

MAYOR NABOURS	COUNCILMEMBER ORAVITS
VICE MAYOR EVANS	COUNCILMEMBER OVERTON
COUNCILMEMBER BAROTZ	COUNCILMEMBER WOODSON (telephonically)
COUNCILMEMBER BREWSTER	

Others present: City Manager Kevin Burke; City Attorney Rosemary Rosales.

## 3. PLEDGE OF ALLEGIANCE AND MISSION STATEMENT

### MISSION STATEMENT

The mission of the City of Flagstaff is to protect and enhance the quality of life of its citizens.

## 4. APPROVAL OF MINUTES FROM PREVIOUS MEETINGS

- A. Approval of Minutes: Regular City Council Meeting of December 18, 2012; Special City Council Meeting of January 4, 2013; Special City Council Meeting (Executive Session) of January 8, 2013; and the Work Session of January 8, 2013.

**Councilmember Overton moved to approve [the minutes of the Regular City Council Meeting of December 18, 2012; Special City Council Meeting of January 4, 2013; Special City Council Meeting (Executive Session) of January 8, 2013; and the Work Session of January 8, 2013]; seconded by Councilmember Brewster; passed unanimously.**

5. **PUBLIC PARTICIPATION**

Public Participation enables the public to address the Council about an item that is not on the agenda. Comments relating to items that are on the agenda will be taken at the time that the item is discussed. If you wish to address the Council at tonight's meeting, please complete a comment card and submit it to the recording clerk as soon as possible. Your name will be called when it is your turn to speak. You may address the Council up to three times throughout the meeting, including comments made during Public Participation. Please limit your remarks to three minutes per item to allow everyone an opportunity to speak. At the discretion of the Chair, ten or more persons present at the meeting and wishing to speak may appoint a representative who may have no more than fifteen minutes to speak.

Lena Wallen, Flagstaff, voiced support for the many organizations mentioned in the recent Flagstaff Business News column, and urged the Council to continue their support. Mayor Nabours noted that these organizations would be discussed at a meeting for that purpose on February 4, 2013, at which time they could have a complete dialogue.

6. **PROCLAMATIONS AND RECOGNITIONS**

A. Recognition and Thank You to Code Compliance Volunteers

Zoning Administrator Roger Eastman introduced Tom Boughner, Code Compliance Manager, who gave a PowerPoint presentation on the projects that have been completed by the many volunteers of the City, and thanked them for all of their work.

7. **APPOINTMENTS**

Pursuant to A.R.S. §38-431.02, notice is hereby given to the members of the City Council and to the general public that the City Council may vote to go into executive session, which will not be open to the public, for the purpose of discussing or considering employment, assignment, appointment, promotion, demotion, dismissal, salaries, disciplining or resignation of a public officer, appointee, or employee of any public body..., pursuant to A.R.S. §38-431.03(A)(1).

A. **Consideration of Appointments:** Planning and Zoning Commission.

**Vice Mayor Evans moved to reappoint David Carpenter to the Planning and Zoning Commission, term to expire December 2015; seconded by Councilmember Barotz; motion passed by a majority with Vice Mayor Evans, and Councilmembers Barotz, Brewster and Overton in favor.**

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**Mayor Nabours moved to appoint Steve Jackson to the Planning and Zoning Commission, term to expire December 2015; seconded by Councilmember Oravits; passed by a majority, with Mayor Nabours and Councilmembers Oravits, Overton and Woodson in favor.**

**Vice Mayor Evans moved to reappoint Tina Pfeiffer to the Planning and Zoning Commission, term to expire December 2015; seconded by Councilmember Brewster; passed by a majority with Vice Mayor Evans and Councilmembers Barotz, Brewster and Overton in favor.**

**B. Consideration of Appointments: Sustainability Commission.**

Councilmember Overton stated that he had been able to contact Jan Kerata, applicant, and she indicated she had taken a new position and was no longer interested in being considered.

**Councilmember Oravits moved to appoint Elisha Dorfsmith to the Sustainability Commission, term to expire October 2015; seconded by Councilmember Overton; passed by a majority with Mayor Nabours and Councilmembers Brewster, Oravits, Overton and Woodson in favor.**

**8. LIQUOR LICENSE PUBLIC HEARINGS**

None submitted

**9. CONSENT ITEMS**

**ALL MATTERS UNDER 'CONSENT AGENDA' ARE CONSIDERED BY THE CITY COUNCIL TO BE ROUTINE AND WILL BE ENACTED BY ONE MOTION APPROVING THE RECOMMENDATIONS LISTED ON THE AGENDA. UNLESS OTHERWISE INDICATED, EXPENDITURES APPROVED BY COUNCIL ARE BUDGETED ITEMS.**

Councilmember Woodson requested that Item 9-G be removed as he needed to declare a conflict of interest on that item.

Councilmember Overton requested that Item 9-E be removed as well.

**Councilmember Brewster moved to approve Consent Items 9-A, B, C, D, and F; seconded by Councilmember Overton; passed unanimously.**

**A. Consideration and Approval of Amendment to Contract: Amendment to add Water Infrastructure Finance Authority (WIFA) Federal Loan Provisions to Contract.**

**MOTION:** Approve Contract Amendment One for the Water Resource Sustainability Study with AMEC Environment and Infrastructure, Inc.

- B. **Consideration and Approval of Amendment to Contract:** Amendment to add Water Infrastructure Finance Authority (WIFA) Federal Loan Provisions to Contract.

**MOTION:** Approve Contract Amendment One for project work related to the Navajo-Hopi Water Rights and Red Gap Ranch Settlement with Ballard Spahr

- C. **Consideration and Approval of Amendment to Contract:** Amendment to add Water Infrastructure Finance Authority (WIFA) Federal Loan Provisions to Contract.

**MOTION:** Approve Contract Amendment One for the Red Gap Ranch Pipeline Alignment Feasibility Study with Jacobs Engineering Group, Inc.

- D. **Consideration and Approval of Memorandum of Understanding that supports Stipulation (Civil No. 6417):** Consider renewing an expired cooperative agreement (Memorandum of Understanding [MOU] and Charter) between the City of Flagstaff, the United States Forest Service (USFS) and the National Park Service (NPS), that satisfies the Stipulation (Civil No. 6417) the City entered with the aforementioned parties in 2001.

**MOTION:** 1) Renew the MOU between the City of Flagstaff, USFS, and NPS; 2) renew the Charter as a document attached to the MOU; and 3) authorize the City Manager to execute the necessary documents

- F. **Consideration and Approval of Agreement:** Between the City of Flagstaff and the High Country Fire Rescue for dispatch services.

**MOTION:** Approve the agreement for dispatching services between the City of Flagstaff and the High Country Fire Rescue Fire Department.

- G. **Consideration and Approval of Consulting Contract:** Street Maintenance Program, Calendar Years 2013, 2014 & 2015

**Councilmember Barotz moved to approve [the design services contract with Plateau Engineering, Inc., in the amount of \$189,990.88 with a contract time of 1090 days; change order authority in the amount of \$18,999 (10%) of the contract amount to cover potential costs associated with unanticipated items of work; and authorize the City Manager to execute the necessary documents]; seconded by Councilmember Brewster; passed 6-0 with Councilmember Woodson abstaining due to a conflict of interest.**

- E. **Consideration and Approval of Agreements:** U.S. Forest Service - Coconino National Forest for Forest Bond #405 (*Flagstaff Watershed Protection Project*)

Paul Summerfelt, Flagstaff Fire Department, gave a PowerPoint presentation which reviewed the various documents:

- Memorandum of Understanding
- Cooperating Agency Status Agreement

- Master Participating Agreement

**Councilmember Brewster moved to approve [the Memorandum of Understanding; the Master Participating Agreement; and the Memorandum of Understanding-Cooperating Agency Status Agreement]; seconded by Councilmember Overton; passed unanimously.**

10. **ROUTINE ITEMS**

- A. **Consideration of Ordinance No. 2012-17:** Amending the official zoning map for a site of approximately 9.02 acres at 2400 North Gemini Drive from Rural Residential (RR to Research & Development (R&D) (conditional).

Brief discussion was held on the item; staff noted that a CCR would be provided to more clearly outline the \$150,000 cost of the design that had been previously referenced at the budget session.

**Mayor Nabours moved to read Ordinance No. 2012-17 for the final time by title only; seconded by Councilmember Brewster; passed unanimously.**

*AN ORDINANCE AMENDING THE FLAGSTAFF ZONING MAP DESIGNATION OF APPROXIMATELY 9.02 ACRES OF REAL PROPERTY LOCATED AT 2400 NORTH GEMINII DRIVE FROM RR, RURAL RESIDENTIAL, TO R&D, RESEARCH AND DEVELOPMENT (CONDITIONAL)*

**Councilmember Overton moved to adopt Ordinance No. 2012-17; seconded by Councilmember Brewster; passed unanimously.**

- B. **Consideration of Sale of City-owned Property:** Fire Station No. 7 (west of Milton, south of Butler) APN's 103-06-019, 103-06-017A, 103-06-018A, 103-06-003B consisting of a total of 1.52 acres; North San Francisco (abutting Switzer Canyon Wash, aka Elks Lodge Property, south of Horny Toad Rd) APN 110-03-001B 26.03 acres; Schultz Pass (east of Schultz Pass Road and north of Elden Lookout Rd) APN 300-47-004 20 acres; and Fire Station No. 2 (south of east First and west of North Second, adjacent to Joel Montalvo Park) APN 107-04-046 .47 acres.

Mayor Nabours said that discussion of the Schultz Pass and North San Francisco properties would be moved to the 6:00 p.m. meeting.

Brief discussion was held on the wording in the staff summary as to what the proceeds would be used for, as it said that the proceeds would be used for a new courthouse; Mayor Nabours noted that the wording had been changed to "may" be used for a courthouse. Some members did not want to tie the Council into using the proceeds for a courthouse (if other funds may become available), while others questioned why they would sell the property if it was not being used for a courthouse.

Fire Station No. 7

Up to \$250,000 would need to be used to offset that portion of the bonds used to build the new Fire Station; the balance would be discretionary.

Ms. Trompeter gave a brief presentation regarding the Fire Station properties. She noted that staff has considered retaining rights on the property for drainage. She said that various options had been considered on how to market the property.

Vice Mayor Evans asked if they would consider the Neighborhood Plan when and if they put the property out to bid. She said that the Plaza Vieja area has had a plan in the planning stages for two years. Ms. Trompeter said that if they were to move forward with the marketing, they would include a community outreach effort, speaking with different commissions and neighborhoods.

Mr. Burke said that the Charter requires that the Council approve of any property disposition. They could come back to the Council at any point in the process. Staff's preference would be to get direction up front, but at this point their main question was whether the Council was interested in selling the property.

**Councilmember Oravits moved to proceed with putting together the sale of this property (Fire Station No. 7), with various options on the structure of the sale to come back to Council; seconded by Councilmember Brewster; passed 6-1 with Vice Mayor Evans casting the dissenting vote.**

Fire Station No. 2

Councilmember Overton declared a conflict of interest as he was a neighboring property owner.

Vice Mayor Evans clarified that it was sale of the building, but not the park and baseball field. Ms. Trompeter replied that was correct; staff would be splitting the lot to accommodate just the sale of the building.

Vice Mayor Evans said that she would vote no on this as well because she thought they were selling the properties to fund a courthouse. Councilmember Barotz said that conceptually she believed these were the types of properties they should sell to get back on the tax rolls, but she was not clear with the process. Mayor Nabours noted that the process had yet to be determined; at this point staff was asking if they were interested in heading in the direction of selling it.

**Councilmember Oravits moved to proceed with putting together the sale of this property (Fire Station No. 2), with various options on the structure of the sale to come back to Council; seconded by Councilmember Brewster; passed 5-1 with Vice Mayor Evans casting the dissenting vote and Councilmember Overton abstaining.**

- C. **Consideration and Approval of Settlement for Injury Claim:** Heirs of Kyle R. Garcia, Deceased (Gabriel Garcia, father; Santino Garcia, son of Kyle, a minor through his guardians Leandro and Eleanor Carillo; Solome Garcia, daughter of Kyle, a minor through his legal guardians, Harold and Angela Trimble, for their wrongful death claims) versus the City of Flagstaff.

Mayor Nabours explained that there had been no finding of any wrongdoing on the part of the police officers; this was a compromise to avoid further litigation expenses, and the proceeds would be paid from the City's insurance company.

**Mayor Nabours moved to confirm the settlement [between the City of Flagstaff and statutory beneficiaries of deceased Kyle R. Garcia. Listed beneficiaries are Santino Garcia, a minor child and his guardians; Leandro and Eleanor Carillo; Salome Garcia, a minor child, and her guardians: Harold and Angel Trimble, and Gabriel Garcia, father of the deceased]; seconded by Vice Mayor Evans; passed unanimously.**

### **RECESS**

The Flagstaff City Council Meeting recessed at 5:52 p.m.

### **6:00 P.M. MEETING**

### **RECONVENE**

Mayor Nabours reconvened the Council Meeting at 6:13 p.m., at which time members of Boy Scouts Troop 129 presented the colors and led the audience in the Pledge of Allegiance.

### **NOTICE OF OPTION TO RECESS INTO EXECUTIVE SESSION**

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### **11. ROLL CALL**

*NOTE: One or more Councilmembers may be in attendance telephonically or by other technological means.*

Present:

MAYOR NABOURS	
VICE MAYOR EVANS	COUNCILMEMBER ORAVITS
COUNCILMEMBER BAROTZ	COUNCILMEMBER OVERTON
COUNCILMEMBER BREWSTER	COUNCILMEMBER WOODSON (telephonically)

Others present: City Manager Kevin Burke; City Attorney Rosemary Rosales.

12. **PUBLIC HEARING ITEMS**

None submitted

13. **CARRY OVER ITEMS FROM THE 4:00 P.M. AGENDA**

Schultz Pass Property

Ms. Trompeter briefly reviewed the property, noting that it consisted of approximately 20 acres, located in Coconino County, and was zoned General. Under the Regional Plan the use was designated as Rural Open Space. Staff's intention was to retain FUTS trail easements; currently the property was vacant and a portion is used by the community for bikes and access into the forest.

Councilmember Barotz asked if anyone had shared any information with the Flagstaff Biking Organization, as it was her understanding that they had been having ongoing discussions about this property for awhile.

Ms. Trompeter said that she had not approached anyone, including commissions, as she first wanted to see if the Council had any interest in considering the sale of this property.

Mr. Burke noted that during the Budget Retreat last November, they had looked at a wide variety of properties that had competing needs for City purposes, but when they had discussed the courthouse, staff had been directed to move forward with disposition of properties for that purpose.

Ms. Trompeter said that if the Council was interested in moving forward, then staff would make contact with the various groups. Vice Mayor Evans asked if there was not a way to obtain input from the various commissions and public before deciding whether to move forward.

North San Francisco Property

Ms. Trompeter reviewed this property, noting that it consisted of approximately 26 acres, zoned single-family residential. The Regional Plan Land Use Map designates it as medium density residential. The property does have water and sewer to the property. She said that it was on a steep incline, so they were not sure how developable it would be. Mr. Cronk added that the southern portion, which is the flattest part of the property, has utilities and is the most developable. Further up it could be open space, but sometimes developers will buy more than the minimum needed so that they are able to meet other open space requirements.

The individuals listed below addressed the Council regarding the following concerns related to either one or both of the parcels:

- Did not first meet with interested commissions and/or public
- Conflicts with the goals of economic vitality, social inclusion and environmental protection
- Public uses property for access to Dry Lake Hill trail system (a lot of out of state license plates)
- One area where anyone in community can enjoy recreation at no cost

- Property includes base of Schultz Creek; full of water and game tank on property
- FUTS Trail easements need to be maintained
- History of both parcels needed for Council consideration
- Concerns with flooding potential and stormwater runoff
- Potential litigation expenses
- Parking concerns
- City has great trail system – this would impact
- Already a lot of pedestrian, bike and automobile traffic in area

- Jon Mason
- Moran Henn
- Joel Armstrong (spoke re both parcels)
- Anthony Quintile (Flagstaff Biking Organization) (spoke re both parcels)
- Mark Haughwout
- Nat White
- Kathryn Barrett
- Ken Lane (owner of Absolute Bikes)
- Rudy Preston
- Andy Fernandez
- Jerome Naleski
- Joel Dugdale
- Sharon Hester

Al White, speaking as Chairman of the Flagstaff Housing Authority, said that they were in the process of scheduling their first Strategic Plan Board Retreat to discuss development opportunities and this was one of the properties they were interested in. He requested that the Council not sell the property to raise funds for a new courthouse facility, and if that was not feasible, then to include affordable housing within the RFP. He said that they had also talked about the 4.4 acres next to Thorpe Park.

Mayor Nabours said that in the past there had been some discussion of possibly selling City property to use toward funding a courthouse. This was a starting point. Staff did not want to move forward with investigating any of these further if there was no interest on the part of Council.

**Councilmember Barotz moved to remove the North San Francisco Street property off the list completely for any further consideration; seconded by Vice Mayor Evans; motion failed 2-5 with Vice Mayor Evans and Councilmember Barotz voting in favor.**

**(With regard to the North San Francisco Street property), Mayor Nabours moved to direct staff to provide information on: stormwater, input from the Open Space Commission and the Flagstaff Housing Authority; where the property stands in relation to the current Regional Plan and the proposed Regional Plan, adjacent parcels and whether they are private or government owned; and have Community Development give them some idea on what areas have slope limitations that are not developable, and what are developable, and what conditions could be placed on it for the FUTS trail, including easements and rights-of-way for trails; and also information be provided on the history of the property and have public input, including conversations with the people in that area; all to be brought back to the Council for a Work Session; seconded by Councilmember Oravits; motion passed**

**5-2 with Vice Mayor Evans and Councilmember Barotz casting the dissenting votes.**

**Councilmember Barotz moved to remove from consideration at this time the sale of the Schultz Pass property; seconded by Vice Mayor Evans; motion passed 4-3 with the following roll call vote:**

Mayor Nabours	Yes
Vice Mayor Evans	Yes
Councilmember Barotz	Yes
Councilmember Brewster	No
Councilmember Oravits	No
Councilmember Overton	Yes
Councilmember Woodson	No

A break was held from 7:36 p.m. to 7:50 p.m.

14. **REGULAR AGENDA**

Mayor Nabours moved Item 14-A to be considered after 15-C.

15. **DISCUSSION ITEMS**

- A. **Discussion Item:** Discussion to identify policy amendments to the Flagstaff Zoning Code.

Mayor Nabours explained that this had been placed on the agenda for Council to discuss and give direction to staff as to which items to move forward for further review by the Commission and Council as to the Flagstaff Zoning Code.

After brief discussion, **Mayor Nabours moved to forward all items, 1-60, forward, with the exception of #6 and #41; seconded by Councilmember Oravits.**

Vice Mayor Evans asked if they wanted to include #40 as well. Mr. Cronk explained that this change would reduce the reduction that they currently give. After this explanation, Vice Mayor Evans was fine with moving it forward as well.

**Motion passed unanimously.**

**Item 6 – Review of the Zoning Text/Map Amendment Process**

Councilmembers discussed the need to have further discussion and input on the Zoning Text/Map Amendment process and it was suggested that a separate workshop be scheduled, if it was Council's consensus to review this issue further.

Councilmember Brewster read a letter from Bill Calloway requesting that a fully-informed decision be made, that received everyone's input.

The following individuals addressed the Council in support of further discussion on the process:



- Rich Bowen, representing ECONA
- Mark Huey

The following individuals spoke against further discussion of the process, noting that it had gone through a prior public process to arrive at its current form:

- Norm Wallen
- Marilyn Weissman, representing Friends of Flagstaff's Future

Mayor Nabours clarified that all they would be voting on tonight was whether to hold further discussions on the process in the future, or to leave it as is, with no further consideration.

Vice Mayor Evans noted that the new Zoning Code has only been in place for the past eight months, and she understood the frustration of those that felt they had already been a part of the process review and were moving forward with the new Code.

After further discussion, **Mayor Nabours moved that Item 6, Review of the Zoning Text/Map Amendment Process, be reviewed for possible changes and that staff set up a roundtable meeting, leaving it to Community Development as to the specific members of the public to be invited, and that it be a question/answer roundtable rather than a meeting at the dais, and that no draft or proposed amendment be created yet, until they have complete input from the public and a consensus from Council to move something forward to the Planning and Zoning Commission; seconded by Councilmember Oravits.**

Councilmember Barotz said that she worked very hard to be part of the solution last time, and she believed they had not really given the new Code a fair chance. She would not support the motion to move forward, but would work in good faith to try and find a solution and ensure that the public interest is protected.

Councilmember Overton said that he would like to ensure that there are still no further obstacles with the process and that is why he would be supporting the discussion.

**Motion passed 5-2 with the following roll call vote:**

Vice Mayor Evans	No
Councilmemver Barotz	No
Councilmember Brewster	Yes
Councilmember Oravits	Yes
Councilmember Overton	Yes
Councilmember Woodson	Yes
Mayor Nabours	Yes

Item 41 – ADA Parking

Staff explained that if there was an existing parking lot that was being recoated and restriped, they would have to get a permit and provide a diagram to ensure that the appropriate number of ADA spaces was still being provided.

Al White further explained the issue of various-sized spaces needed to accommodate handicapped parking, and how businesses could actually lose a parking space if they were recoating their parking area.

Mr. Cronk said that staff was not prepared to address the specifics of this issue, but they could provide some various scenarios for further consideration.

**Councilmember Oravits moved to have some of the questions answered, and include this item in the larger list to be reviewed further; seconded by Councilmember Brewster; motion passed 4-3 with the following roll call vote:**

Councilmember Barotz	No
Councilmember Brewster	Yes
Councilmember Oravits	Yes
Councilmember Overton	No
Councilmember Woodson	Yes
Mayor Nabours	Yes
Vice Mayor Evans	No

Councilmember Barotz asked that the Disability Commission be involved in the discussion and have a voice.

B. **Discussion Item:** Filling of vacancies on Regional Plan Citizens Advisory Committee (RPCAC)

It was noted that this item was placed on the agenda to determine if a majority of Councilmembers wished to consider additional appointments to the Regional Plan Citizens Advisory Committee.

**Councilmember Oravits moved to add people to the RPCAC; motion died for lack of a second.**

C. **Discussion Item:** Petition filed by Rudy Preston and Kathleen Nelson re their complaint filed with the Arizona Department of Environmental Quality re the use of reclaimed water at Snowbowl

Rudy Preston and Katie Nelson, Flagstaff, addressed the Council and reviewed the complaint they had recently filed with the Arizona Department of Environmental Quality, and presented pictures of alleged violations to members of the Council.

**Mayor Nabours moved to refer this issue to staff (Legal with input from Utilities) and provide Council with a report; seconded by Vice Mayor Evans.**

Councilmember Brewster asked if someone had observed any of the alleged violations. Mr. Hill responded that staff has jointly gone up with ADEQ in December to evaluate compliance prior to the City delivering water, and they were in compliance at that time.

**Motion passed unanimously.**

- (14) A. **Consideration and Adoption of Ordinance No. 2013-01:** An ordinance amending Title 8, Public Ways and Property, Chapter 8-03, Streets and Public Ways, Section 8-03-001-0004, Removal of Snow and Ice, and declaring an emergency.

Tom Boughner, Code Compliance Manager, gave a PowerPoint presentation on the issues he has been addressing with snow removal, and stated that there are some businesses that wait until City staff notifies them that they have to remove the snow from their adjacent sidewalks, even though they already know that it is required.

Councilmembers discussed the need, and voiced concern with, adopting the ordinance with an emergency clause.

**Vice Mayor Evans moved to read Ordinance No. 2013-01 for the first time by title only (with no emergency); seconded by Councilmember Barotz.**

Uncle Don (Fanning) addressed the Council, voicing concern with requiring this of residential properties as well.

Mayor Nabours noted that he did see a difference between residential and commercial properties.

Brief discussion was held on the sidewalks within the ADOT rights-of-way, such as along Milton. Mr. Boughner said that even though ADOT moves the snow on those roads, the City has an IGA with them. Mr. O'Connor noted that even with the IGA with ADOT, they would plow the streets curb to curb, and enforce requirements in that area.

Tom Wyatt, representing the Flagstaff Lodging and Restaurant Association, addressed the Council asking if there was any way for ADOT or the City to let businesses know when they would be plowing so that the businesses didn't clear the sidewalks and then have the roads plowed right after that took place.

Vice Mayor Evans said that it was unfortunate that they had to adopt a new law for a group of people that are not following the current law.

Councilmember Barotz left the meeting at this time (9:45 p.m.).

Mr. O'Connor did explain that the City did have a list of those individuals that have handicapped placards and have contacted their department, so that staff can remove the berm within their driveways. It was also noted that there were some private volunteer groups that may assist with such efforts.

**Motion passed 5-1 with Mayor Nabours casting the dissenting vote and Councilmember Barotz absent.**

*AN ORDINANCE AMENDING FLAGSTAFF CITY CODE TITLE 8, PUBLIC WAYS AND PROPERTY, CHAPTER 8-03, STREETS NAD PUBLIC WAYS, SECTION 8-03-001-0004, REMOVAL OF SNOW AND/OR ICE; AND DECLARING NA EMERGENCY.*

D. **Discussion Item:** Representation for City's lobbying trip to Washington D.C.

Discussion was on who would be interested in a trip to Washington D.C. for lobbying purposes. Staff noted that Councilmember Barotz would be back there for a NAIPTA conference from March 9-13, and was willing to go earlier or stay later to join others, if they would like her to do so.

The following individuals indicated an interest in attending: Mayor Nabours; Councilmembers Brewster and Oravits, and they would attempt to align it with Councilmember Barotz's trip.

16. **PUBLIC PARTICIPATION**

None.

17. **INFORMATIONAL ITEMS AND REPORTS FROM COUNCIL AND STAFF, REQUESTS FOR FUTURE AGENDA ITEMS**

Councilmember Oravits reported that he had attended the opening of the 51<sup>st</sup> Legislature, having been invited by Brenda Barton. He had the opportunity to also sit down with Chester Crandell and Bob Thorpe.

Mayor Nabours reported that he also attended the above, and the one thing he noticed was that everybody likes, and is interested in, Flagstaff.

Vice Mayor Evans requested that when an item comes before Council that they first hear from staff, then the public, and then discuss among the Council.

Upon request by Mr. Burke, Councilmembers Brewster and Oravits agreed to serve as judges on Saturday, February 9, 2013, for the snowman-making contest.

18. **ADJOURNMENT**

The Regular Meeting of the Flagstaff City Council held on January 15, 2013, adjourned at 10:10 p.m.

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MAYOR

ATTEST:

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CITY CLERK

**CERTIFICATION**

ARIZONA )  
          ) ss.  
Coconino )

I, ELIZABETH A. BURKE, do hereby certify that I am the City Clerk of the City of Flagstaff, County of Coconino, State of Arizona, and that the above Minutes are a true and correct summary of the meeting of the Council of the City of Flagstaff held January 15, 2013. I further certify that the meeting was duly called and held and that a quorum was present.

Dated this 5th day of February, 2013.

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CITY CLERK

## MINUTES

**CITY COUNCIL SPECIAL BUDGET MEETING  
TUESDAY- JANUARY 22, 2013  
COUNCIL CONFERENCE ROOM – 211 WEST ASPEN  
12:30 P.M.**

**1. Call to Order**

Mayor Nabours called the Special Budget Meeting to order at 12:35 p.m.

**2. Roll Call**

*NOTE: One or more Councilmembers may be in attendance telephonically or by other technological means.*

Present:

MAYOR NABOURS	COUNCILMEMBERORAVITS
VICE MAYOR EVANS	COUNCILMEMBER OVERTON
COUNCILMEMBER BAROTZ	COUNCILMEMBER WOODSON (telephonically)
COUNCILMEMBER BREWSTER	

Others present: City Manager Kevin Burke; City Attorney Rosemary Rosales.

**3. Presentation on budget-related issues**

Community Development/Planning/Development - Code Compliance  
Community Development/Planning/Development - Building Inspection  
Community Development/Planning/Development - Advance Planning  
Community Development/Planning/Development

Community Development Director Mark Landsiedel gave a PowerPoint presentation which was an overview of the Community Development Department. He said that what he and Jim Cronk do is mostly management, but they also manage some of the more difficult projects.

Planning Director Jim Cronk then continued with the PowerPoint reviewing some of the time frames for various review processes.

Discussion was held on self-certification. He reviewed the Phoenix model, noting that they have a 16-month training program. He said that they are proposing that Flagstaff add an additional one-week training for those already certified to cover those issues specific to the Flagstaff region.

Mr. Cronk said that since they came up with this idea they have met with builders and got a lukewarm reception. Last week staff went to the meeting of the local architectural association and none of them were interested. The biggest reason was that they like the City having a second set of eyes on everything they do.

Vice Mayor Evans said that it appears that the City is only collecting 50% of the actual costs in their department. Mr. Cronk said that was correct, and was based on previous Council direction. He added that it is paid for through the General Fund. Vice Mayor Evans said that it would appear that the City is subsidizing that area and helping developers.

Councilmember Overton said that where it could be helpful is in the case of a small tenant improvement, such as a Subway, where the plans are the same for every store. He did not think they would see a lot of people using it. Mr. Cronk said that was why they would like to go ahead with the tenant improvements and see what kind of participation they get. If there is a lot of participation then perhaps they could look at allowing it at the next level higher. He said that staff has an entire Building Code update scheduled to bring before Council at the end of February or early March and they would talk about this at the same time.

Mr. Cronk said that because of the peaks and valleys in the building industry, they use outside firms to assist with plan review, but they keep about 25% because they are still doing inspections and they will spot check their work. He said that they have several builders in town that have asked for the City to review their plans rather than outside firms.

Discussion then turned to Code Compliance. Mr. Cronk said that in 2008 they had four dedicated staff for code enforcement; now they have 1-1/3. He said that once the Regional Plan is complete, Kim would move into other areas such as annexations, long-range and specialty plans, and implementation of the Regional Plan.

Vice Mayor Evans asked if they could work on linking of the two plans – the Regional Plan and the Zoning Code. Mr. Cronk said that they were trying to get there, but their immediate pressures are with completing the Regional Plan. Mr. Landsiedel added that as they continue to implement the Regional Plan, staff will be adding a new section to the Staff Summaries on how the item addresses the Regional Plan.

Mayor Nabours asked if there was anything that the Council could help with to allow their department to work more efficiently; perhaps some type of state-of-the-art process that they currently were not using.

Discussion was held on the changes that have occurred since Mr. Landsiedel took over this department, such as the Single Point of Contact system. He said that between the rewrite of the Zoning Code and the Regional Plan, those documents will help modernize and clarify a lot of what they have to implement. He said that one area that has really helped is the DRB process where all involved departments meet together to review projects. It was also noted that the City was in the process of moving to a new software program, moving from Kiva to Innoprise, which will help with this process.

Councilmember Barotz said that she thought they all had a responsibility to communicate the facts that the City is business-friendly and not perpetuate the myths. She believed that staff works hard and they cannot always see the obstacles they face. She has seen a considerable improvement over the years and they owe it to the City

staff and community to send out a positive message, at the same time identifying any problems.

Mayor Nabours said that he has heard that in some cities they have an “expeditor” or “facilitator.” Mr. Cronk said that is similar to the City’s Single Point of Contact, so that if a developer should have issues they would go to that SPC rather than having the contact various departments.

Mr. Cronk said that their feedback from the community is that the process is 80-90% better than it was. He said that they do surveys at the front counter and at the old APS building at the building department. A process has been established when an issue is raised so a team sits down and looks at the problem to determine if the ordinance is wrong, or the process is wrong.

Councilmember Barotz said that as they have reduced the budget overall with training taking a big hit and she felt it was important to maintain training. She said that they were not going to move forward as a City if they do not keep staff current.

A break was taken from 2:00 p.m. to 2:16 p.m.

#### Land Trust

Sarah Darr, Housing Manager, gave a PowerPoint presentation on Housing.

Councilmember Oravits referred to the presentation, and suggested that they look at the low-end of houses for values because most first-time buyers are buying lower end homes. Ms. Darr noted that they also have professionals coming into the area that are not interested in buying first-time homes.

Discussion was held on the current housing situation. Ms. Darr said that there are a lot of tax credit units, but they were not included in this presentation because the City does not administer them.

Councilmember Oravits said that there are two homes for sale in Izabel for \$166,900, and they do not get the land. He said that he did not see where these are beneficial when there are other homes for less, and people also get the land. Vice Mayor Evans asked how often that was the case, with the market fluctuating.

Ms. Darr said that with the Land Trust they have outsourced, at Council direction, the long-term affordability responsibilities. For the rental units, it is an orientation piece, working with property management and monitoring.

Councilmember Barotz asked how many negotiations the City had entered into with developers where they have tried to secure affordable housing, but were not successful. Ms. Darr said that what was presented is what has been constructed. Since the incentive policy was updated in 2009, this is all that has been addressed. They have not had any large scale developments come forward; nothing has been brought before Council.



Councilmember Barotz said that, as she stated earlier in the meeting, the Council needs to be sure that when they are talking with citizens that they are conveying the correct information.

Mayor Nabours asked if the Land Trust had some legal implications. Ms. Darr said that they call their program a Land Trust Program because they do not hold it with a third-party entity; they have a ground lease with eligibility criteria. She said that they have a number of parcels that are City-owned that are restricted in some way for use as housing. Whether they purchased it with federal funds (Izabel Homes) or the land was deeded to the City in a Development Agreement (Pine Canyon), or they purchased it (Schultz Plass) for affordable housing. There are other pieces of City-owned properties that make logical sense to use for housing, but there are no restrictions with it.

Mayor Nabours asked if there was a fund of money that could be used for some of this affordable housing program, specifically the Izabel Housing program, and he asked how much was in that pool. Mr. McIntire said that they were expecting at the end of this fiscal year they will be at \$1.2 million. Mr. Burke clarified that those were one-time monies, placed in the fund before the recession and they have been using it as a revolving fund. They have not been adding new General Fund dollars.

Mayor Nabours asked if they could be used for something else. Ms. Darr said that some of them were proceeds from land sales, so some of them are not General Fund dollars. Mr. Landsiedel said that for a number of years they would get a General Fund allocation. That money has been saved up to do Izabel and others. Each time they sell a house they see money come back, maybe \$15,000 less than what was put into it.

Discussion was held on the qualifications. Ms. Darr said that for ownership units they have to be able to fund on their own. The City does not participate in the mortgage financing. They have to be a resident of Flagstaff or the surrounding area, of majority age, and a legal resident of the United States, and they have to be a first-time Flagstaff homebuyer. She said that when they sell the house there is a formula to determine what they get back on it.

Ms. Darr said that the owners are simply getting a deed to the home; the City does not guarantee payment on the loan. Historically, there has been a much lower default rate because of the post-purchase support from a third party. If the City does not get their lease fee, they will offer counseling. She said that they have the option to buy the unit to continue to assure its affordability, but they do not guarantee the payment.

#### Compensation

Human Resources Manager Shannon Anderson gave a PowerPoint presentation on compensation, which outlined staff's recommendation for one-time payments.

Councilmember Oravits said that they have needs within the City, and if they do not fundamentally change the way they do things, they will continue to increase. He said that if they reduced City staff through attrition they could save \$4 million a year. Mayor Nabours asked if they could get by with fewer employees. He said that he has not met an employee in the City that he did not think was a good employee and was not doing a

good job. And, they would all like the employees to be top paid, but the numbers are staggering.

Councilmember Woodson said that in looking at the report, giving the employees a .5% one-time raise does not get them back to where they need to be. He would like to see that a 5% permanent, but to do that they have to cut costs elsewhere.

Mayor Nabours asked if they had any idea what the average salary was and how that compared with other cities. Ms. Anderson said that the average salary was \$50,000, but she does not have a good comparison with others. She said that for non-exempt employees in 2008 they were 15.9% below market; now they were 13.11% below. For exempt employees in 2008 they were at 13.6% below; now they were 11.23% below.

Councilmember Overton said that he would like to throw more money at this before other areas. Staff across the board has been patient. He would like to avoid the conversation of which one gets 1% or 3%; he prefers not to do that. He said that it would be great to have attrition address it, but it is never the right position that leaves.

Matt Faull and Noah Eisenman, EAC Co-Chairmen, addressed the Council from the EAC's perspective. They said that the voice of the employee body is that they want raises back; something they can look forward to. They do not want it to be with one-time dollars, but built into the system so they can get raises every year. They agreed they could set aside compaction altogether at this point. They said that they would rather stand together and look forward, reinstating merits across the board, which would be about \$1.5 million for FY15. They said that many have reached the pay cap, so to address that they would like to see an adjustment of the pay plan of approximately 6%, or two steps.

They said that they do not have all of the information available to determine where they could get the money, but they were willing to participate in solutions. They said that they wanted to express that they want to have compensation be a priority of the City.

Councilmember Brewster said that they need to focus on generating more revenue through businesses, tourism, etc. She said that they can only cut so much. It has been demonstrated that they have cut a lot already. She said that they were heading in the wrong direction if they were looking to cut again. They need to be proactive.

Mayor Nabours asked if there was a chance that the employees would have ideas of how they could be more efficient. Mr. Faull said that the employees are very creative as they were the ones in the trenches. He said that they do know where there are inefficiencies and the City Manager has always had an open door.

Mr. Faull said that from an employee perspective, they were looking for a commitment and direction from the Mayor and Council to encourage leadership to address the problems as they see it. Mayor Nabours said that he would be willing to have some kind of program, to draw a line in personnel costs, and every savings they could, those savings could go into a fund to provide for increases.

Councilmember Oravits said that he appreciated Councilmember Brewster's comments about generating revenue, but he saw that as more of a long-term approach. He said that they need to find a way to improve the employee morale.

Vice Mayor Evans said that earlier they talked about eight weeks to turn around a building permit; now they were trying to do it in two. Now they have one person doing the work of three, and they need to readjust that. At some point they will have to readjust some of the stuff they proposed this morning. She said that they also need to look at what people are paying for. This morning they talked about one department only getting 50% recovered through their fees.

Councilmember Overton said that was right. They have to look at services and determine what people are willing to pay for. Discussion was held on the opportunity for people to pay more if they want something provided in a quicker turnaround time. It was noted that some of the things that Council comes up with decreases revenues, and they need to consider that.

Mayor Nabours thanked staff for their service. He said that one complaint he does not hear about the City is the demeanor of City employees. If the morale is low, he can understand, and he appreciates that they are not taking it out on the public. He said that customer service is one thing they get good feedback on, and he thanked them. He said that they thought the employees were exemplary and he gave his commitment that they would do something about this.

A break was held between 4:16 p.m. and 4:30 p.m.

**4. Input and direction from City Council for February Budget Review.**

Mr. Burke said that they know they have big issues regarding compensation and infrastructure. Generally, they are seeing revenues go up, but construction is a volatile area and they do not want to rely on a good year in construction. He said that they divide those revenues between on-going and one-time funds.

He said that between pension, health insurance and liability insurance increases, it eats up most of any increase in ongoing revenues. He said that was why the recommendations were focused around one-time monies. The harder path is reallocation or increased revenue. The mini-retreats have been focused on whether there is a reallocation. He asked to go through the items and have Council provide staff with some direction.

Graffiti – Agreed to look at different funding sources to address, outside of the General Fund.

Library – It was noted that there are a number of volunteers that work here, probably more than anywhere else, and they serve thousands. It was noted that only \$1.1 million comes from the General Fund and rest came from property tax. It was asked if they could get by with just the Library Tax. It was agreed to at least look at hours of operation to see if a savings could be made by reducing underutilized hours.

FUTS Signage – A majority agreed that this particular project was too far along to stop now; they were okay with seeing it through, but it was something to look at in the future.

Consultants – Council agreed that if it was part of a CIP project and they had parameters, there was no need for it to come back to Council, but if it was to provide advice or information to the Council, they would like to see it.

Two-Tiered Fire Response – Council agreed that they should continue with this.

Environmental Management Fee – It was noted that the department used as much revenue as generated, and could use more. It was suggested that other uses, such as graffiti or forest health, be considered from this fund in the future.

General Administration – Mr. Burke committed to look at every vacancy to determine if it needed to be filled. It was suggested that reorganizations may be acceptable if it would benefit the overall organization.

Economic Vitality – Mr. Burke said that there had been some information requested and staff would provide that to Council in the form of a CCR. If there was anything else requested, they should let him know.

Stormwater Management – Council would like to see more of the funds being used for construction rather than planning.

Recreation Fees – Mr. Burke said that since they did not increase the revenues from Jay Lively this year, they still have an ongoing \$100,000 deficit. They can take care of this year, but are committed to let staff review this further and put together proposals, looking at how fields fit in the equation, and reviewing possible incremental increases across the board, including consideration for sponsorships. It was also agreed that they should review the User Fee Policy and determine if they were still okay with it.

Land Trust – Council agreed they would be interested in knowing what else could be done with their funds, besides building spec homes.

Self-Certification – This item will come back before Council during review of the Building Codes.

It was suggested that a formal process be put in place, perhaps not to address immediate needs, for employees to provide suggestions for cost savings throughout the City. Mr. Burke cautioned Council that recommendations may be made by an employee to eliminate another's position, and this could impact morale as well.

Mr. Burke said that staff will work on the targets of infrastructure, as identified at the November retreat, and an increase in compensation.

5. **Adjournment**

The Flagstaff City Council Budget Meeting of January 22, 2013, adjourned at 5:25 p.m.

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MAYOR

ATTEST:

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CITY CLERK

**MINUTES OF THE SPECIAL MEETING (EXECUTIVE SESSION) OF THE FLAGSTAFF CITY COUNCIL HELD ON TUESDAY, JANUARY 29, 2013, IN THE STAFF CONFERENCE ROOM, SECOND FLOOR OF THE FLAGSTAFF CITY HALL, 211 WEST ASPEN, FLAGSTAFF, ARIZONA**

1. Call to Order

Mayor Nabours called the meeting to order at 4:02 p.m.

2. Roll Call

Present:

MAYOR NABOURS

VICE MAYOR EVANS

COUNCILMEMBER BAROTZ

COUNCILMEMBER BREWSTER

COUNCILMEMBER ORAVITS

COUNCILMEMBER OVERTON

COUNCILMEMBER WOODSON

Others present: City Manager Kevin Burke; City Attorney Rosemary Rosales.

3. Recess into Executive Session

**Mayor Nabours moved to recess into Executive Session; seconded by Councilmember Woodson; passed unanimously.** The Flagstaff City Council recessed into Executive Session at 4:02 p.m.

4. **EXECUTIVE SESSION:**

A. Discussion or consultation for legal advice with the attorney or attorneys of the public body; and discussion or consultation with the attorneys of the public body in order to consider its position and instruct its attorneys regarding the public body's position regarding contracts that are the subject of negotiations, in pending or contemplated litigation or in settlement discussions conducted in order to avoid or resolve litigation, pursuant to A.R.S. §§38-431.03(A)(3) and (4), respectively.

i. Nackard et al v. City of Flagstaff

B. Discussion or consideration of employment, assignment, appointment, promotion, demotion, dismissal, salaries, disciplining or resignation of a public officer, appointee or employee of any public body, except that, with the exception of salary discussions, an officer, appointee or employee may demand that the discussion or consideration occur at a public meeting; and discussion or consultation for legal advice with the attorney or attorneys of the public body, pursuant to ARS §§38-431.03(A)(1) and (3), respectively

i. City Attorney recruitment

ii. City Manager contract

5. Adjournment

The Flagstaff City Council reconvened into Open Session at 5:25 p.m. at which time the Special Meeting of January 29, 2013, adjourned.

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MAYOR

ATTEST:

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CITY CLERK

## MINUTES

WORK SESSION  
TUESDAY, JANUARY 29, 2013  
COUNCIL CHAMBERS  
211 WEST ASPEN AVENUE  
6:00 P.M.

### 1. Call to Order.

Mayor Nabours called the Flagstaff Work Session of January 29, 2013, to order at 6:01 p.m.

### 2. Pledge of Allegiance.

The City Council and audience recited the Pledge of Allegiance.

### 3. Roll Call

#### Councilmembers present:

MAYOR NABOURS  
VICE MAYOR EVANS  
COUNCILMEMBER BAROTZ  
COUNCILMEMBER BREWSTER  
COUNCILMEMBER ORAVITS  
COUNCILMEMBER OVERTON  
COUNCILMEMBER WOODSON

#### Councilmembers absent:

None

Others present: City Manager Kevin Burke; City Attorney Rosemary Rosales

### 4. Public Participation (Non-Agenda Items Only):

Public Participation enables the public to address the council about items that **are not** on the prepared agenda. Public Participation appears on the agenda twice, at the beginning and at the end of the work session. You may speak at one or the other, but not both. Anyone wishing to comment at the meeting is asked to fill out a speaker card and submit it to the recording clerk. When the item comes up on the agenda, your name will be called. You may address the Council up to three times throughout the meeting, including comments made during Public Participation. Please limit your remarks to three minutes per item to allow everyone to have an opportunity to speak. At the discretion of the Chair, ten or more persons present at the meeting and wishing to speak may appoint a representative who may have no more than fifteen minutes to speak.

Eva Putzova addressed Council on behalf of Friends of Flagstaff's Future. Ms .Putzova urged the Council to refrain the budget discussions of reducing contributions to local nonprofit organizations.



**5. Preliminary Review of Draft Agenda for the February 5, 2013, City Council Meeting.\***

*\*Public comment on draft agenda items will be taken under “Review of Draft Agenda Items” (Item No. 9) later in the meeting. Citizens wishing to speak on agenda items not specifically called out by the City Council for discussion under the second Review section may submit a speaker card for their items of interest to the recording clerk. The item will be called out during the second “Review of Draft Agenda Items” to allow citizens the opportunity to comment. Citizens are also encouraged to submit written comments.*

Council asked for clarification on item 10A – General Obligation Bonds; he would like to know what those bonds are being used for. It is requested that the use be added to the title so that it is clearer to the public.

Mr. Burke explained that they are for the balance of 2010 infrastructure utilities bond, parts of the Picture Canyon purchase and \$2M on Forest Health Bond.

Vice Mayor Evans clarified that she will have a presentation and visual aids for item 15A next week.

Council asked staff to include a map to go along with consent item 9A.

Mayor Nabours explained to those in attendance that the discussion topic of Item 9 on Water Policy is Vested Interests. This section discusses when someone gets their rights to use of water. The discussion will be limited to Vested Interest and there will be no other discussion about Water Policy.

Council rearranged the order of the agenda, Item 10 will be moved up to after Item 7.

**6. American Recovery and Reinvestment Act - US Department of Energy, Energy Efficiency and Conservation Block Grant (EECBG), City of Flagstaff, Residential Retrofit Program Closeout Presentation.**

Lucy Huffman, Sustainability Assistant, presented a PowerPoint presentation on the Energy Retrofit Program. She explained that a report was also given to the Department of Energy and that agency was happy with the City's program.

**7. Flagstaff Cultural Partners (FCP) Annual Report.**

Karl Eberhard, Community Design and Redevelopment Manager, introduced JT Tannous, Executive Director of Flagstaff Cultural Partners (FCP) and Melissa Collins-Cripps; President of FCP. Mr. Eberhard explained that FCP serves as the coordinating agency for the Arts and Sciences of Flagstaff and distributes the City's grants funds for these programs.

Ms. Cripps reported that they Flagstaff Chamber of Commerce has supported the impact study because they recognize the importance of the arts and sciences in this community and because they recognize the return on investment.

John Tannous presented a PowerPoint presentation on the Flagstaff Cultural Partners Annual Report.

Councilmember Barotz said that she serves as the City Council representative on the FCP Board, and she wanted to make sure that the Council and community knows that this organization does a tremendous amount of work on a limited budget. She then recognized each of the board members present.

Council clarified that the funds that go to FCP are 100% BBB funds; the BBB ordinance provides a certain percentage of funds to be used for arts and sciences. Mr. Tannous explained that FCP's funding is diverse; the City contributes a large portion of the budget through the BBB funds but funds come in through a lot of different areas.

**10. Review of Draft Agenda Items for the February 5, 2013, City Council Meeting.\***

Mayor Nabours moved Item 10 up in the agenda as there were members of the public that would like to address the Council.

Steve Thompson of Aspey Watkins and Diesel, on behalf of the owners of the property referenced in the request for proposals (RFP), addressed the Council on item 10D the Core Services Maintenance Facility. Mr. Thompson urged Council to not reject the proposal or resolicit the RFP and either approve the proposal and continue to negotiate or table the matter. He explained that the contract issues have been resolved and he encouraged Council to review Mr. Kelly's letter of 1/24/13.

Council clarified with Rosemary Rosales that the Council is unable to discuss the terms publicly because no action has been taken on the RFP. Council requested of Ms. Rosales some guidelines on what can and cannot be discussion at the next meeting.

**8. Discussion of Civil Rights Ordinance**

Deputy City Manager Josh Copley presented to Council a draft Civil Rights Ordinance, and gave a brief history of the process.

The following spoke in favor of the Civil Rights Ordinance:

Susan Swanson  
Jamey Hasapis  
Kathryn Jim

Brad Garner  
John Viktora  
Paul Beier

Lisa Raynor  
Kenneth McIntosh  
Moran Henn  
Gordon Watkins  
Bruce Celiz-Hagen  
Gary Robbins

Doug Ballard  
Jim Burton  
Peggy Sheldon-Scurlock  
Nina Porter  
Tim Swanson  
Gary Rosenblatt

The following spoke against the Civil Rights Ordinance:

Dr. James (Jim) Dorman  
Gabor Kovacs  
Paul Meldrum

Comments included:

- Remember the Mission and Vision Statements of the City.
- Change gender identity to transgendered.
- Extend to LGBT the same rights enjoyed by other citizens.
- Respect the separation of church and state.
- Definition of employer – in addition to the Federal definition of 15 or more employees; would like to see ordinance offer extended coverage for employees working for an employer of any size and secure similar accommodations for public accommodation, public education and housing.
- Believe that this ordinance puts laws into place that are unnecessary and difficult to enforce.
- Ordinance is not necessary as the Constitutions of United States and Arizona already protect everyone from discrimination.
- Concern with fines included in the ordinance, heavy fines are an infringement against private property, suggest rewarding instead with tax credits.

A break was held from 7:23 p.m. to 7:37 p.m.

Council asked for clarification of the exclusion section – 14-2-01-004 E.

Mr. Copley explained that there are laws in place that prohibit certain public accommodation businesses from having intoxicated individuals; in this case someone could not say they could not be ejected because they were a protected class, if they were intoxicated.

Council indicated that they would entertain the discussion of different penalty options rather than just monetary.

Council asked for explanation of how the conciliator would be selected. Mr. Copley indicated that they would be selected through the use of the procurement policy and

defined procedures. If the amount of the contract is under \$50,000 the City Manager would have authority to approve.

Council asked about an appeals process. Ms. Rosales offered that the City Manager's office would do the initial screening and then it would be forwarded to a conciliator for resolution. If the conciliator is unable to get to resolution it would be sent to the City Attorney's office for determination of civil prosecution in court. There are multiple avenues if either party disagrees with the decision.

The ordinance is written in such a way that the conciliator is able to investigate and mediate the issue as necessary. The conciliator also submits findings to the City Attorney's office for further review.

Council asked for explanation of dress code requirements. Ms. Rosales explained that typically if an employer can show a rational reason for a dress code, that is what will prevail; this ordinance wasn't written to hinder the way employers choose a dress code, and the ordinance would not supersede that. This is not currently included in the ordinance. Council would like to see it in the ordinance.

Mr. Burke state that the dress code debate is not that they would be superseding a dress code; it is the gender expression issue. If someone is born female but they identify themselves as male, the question is if they would be protected if employer says they have to adhere to the female dress code.

Council asked for clarification on why other protected classes are included in the ordinance. Mr. Copley explained that this was similar language that came up in some of the example models. They were included as a way of affirming the city's commitment to equality for those classes as well.

Ms. Rosales stated that this draft was what staff came up with after a few years of comments from the City Council. There was direction from the City Council at one point to include all of the groups, but they would not be doing the enforcement for some of these groups; the intent was to recognize these classes.

Some members of the City Council were concerned that there might be misunderstanding in the community that this ordinance provides another avenue of recourse for discrimination for the already protected classes. Councilmember Barotz said that she did not see it as misleading, but rather there was an affirmation of protection for all classes.

The definition of educational institutions was discussed; private schools were excluded because they are excluded as a subdivision of the state.

Some Councilmembers were concerned about the fine of \$2,500. Mayor Nabours believed that no business is going to go to a conciliator without an attorney when they're at such a risk; this may change the complexion of what the City was trying to accomplish.

Discussion of page 9 paragraph E, regarding the conciliator considered an investigator and mediator; it was suggested that may be difficult to stay unbiased. There was concern about the confidentiality of the documents related to the investigation and findings. Further research by the City Attorney's office will be done for clarification on what can and cannot be made public.

Mayor Nabours said that he would like to see a provision that the conciliator cannot be called as a witness, nor can the report be used as evidence.

Questions were also raised as to why Page 10, paragraph B, regarding sales records was included and inspection of businesses. David Womochil, Assistant City Attorney, indicated that he was not certain why that period of time was provided; it was modeled after other cities and further examination will be done to understand why. Mr. Copley explained that there is quite a body of law under search and seizure; this section could use some additional language that indicates compliance to the law.

Council asked about how the amounts of the civil penalties were determined and if they were comparable to other civil penalties. Ms. Rosales stated that \$2,500 fine is usually the maximum. In looking at the other cities the maximum was always at \$2,500. Typically they like to give judges discretion to determine the amount of the fine.

Another concern with the ordinance was that the conciliator can require a respondent to give a statement under oath. Council would like for staff to look at that section as well to determine the legality of that process.

Questions were also raised regarding Page 6 section A, exclusion of a business on or near an Indian reservation. Mr. Womochil explained that this exclusion is based on federal law. This law only applies to a business that has a formal hiring practice that favors Native Americans. These exclusions were included in the ordinance in order to be consistent with federal law.

Council asked the City Attorney to address the issues raised and bring back to the next work session for further review. Council suggested bringing back some different options to avoid the need for continual redrafting.

Mr. Burke suggested that the quickest way to get this back in front of Council would be as a discussion item at a regular meeting. He suggested that they tentatively schedule it for February 19, 2013, but recommended that the public watch the agendas.

Council agreed that fines were okay, but they would like additional information on other fines and what other cities do as well as an alternative paragraph with deferred action.

Ms. Rosales offered that the purpose of the conciliation process is deferred action. The language in the document could be clearer and staff will look at adding more information in this area.

**9. Presentation on Principles of Sound Water Management - Water Policies**

Brad Hill, Utilities Director, offered a PowerPoint presentation on Section B2.2 of the Water Policy.

Roger Eastman, Zoning Code Administrator continued the presentation.

He said that once land is subdivided the plat is recorded through the County and there is now an entitlement to land and the water is guaranteed in perpetuity.

A Zone Change would allow two years to apply for a building permit and therefore guarantee water; if longer than two years that guarantee may not be there.

Council asked if a vacant parcel that is zoned industrial would be given some designation of water allocation as it sits vacant. Mr. Hill responded yes, it would have a specific designation; the City evaluates the water demand needs based on existing zoning, or the regional plan.

The whole concept of Arizona's water management programs is to tie growth and development with water supply. They have been developing without any recognition of water needs, and this program will provide this recognition and planning. He said there are tremendous volumes of state law regarding water and its allocation.

It was suggested that in a way they would be using water as an incentive for economic development by allocating a certain amount. Council asked about the parameters of allocation and incentives.

Mr. Eastman said that they would be using the criteria in section B2.2g. Utilities, Community Development and Economic Vitality would have to work together to determine the allocation. It is a first come, first serve process.

Council asked about a safety mechanism to avoid over allocation. Mr. Hill explained that currently they do not track; they are putting in a tracking mechanism that will record every subdivision plat. This gets recorded with the Arizona Department of Water Resources and removes that water from their designation in order to keep track of what is currently available.

The following individuals addressed Council about the Water Policy:

- Karen Goodwin, Friends of Flagstaff's Future, urged Council to refrain from permitting use of reclaimed water for food crops. Ms. Goodwin offered other concerns in writing to City Council.
- Cerissa Hoglander, Flagstaff resident, offered some clarifications to section B.
- Rudy Preston, Flagstaff resident, suggested that promising water into perpetuity is not a good idea. He would like the City to get to a goal of conserving water, not using it.
- Tom Wyatt, on behalf of Flagstaff Restaurant and Lodging Association, suggested incentives for businesses and expanding the two year time period. He also suggested that the Council look into the possibility of being able to transfer water that may not be used.
- Katie Nelson, Flagstaff resident, suggested that they consider capping where they get the water from and consider environmental impacts of acquiring new water sources.

Councilmember Barotz asked that Cerissa Hoglander submit her comments in writing as she was unable to understand what she was saying.

Mr. Eastman clarified that they were not saying it was an absolute two years; it is does vary on size of project and on discretion of the City Council.

Council asked staff to address the following:

- 1) *Does this document address the question of whether the City of Flagstaff should sell reclaimed water outside of City limits?*
- 2) *Did the Water Commission discuss sale of potable water outside the City limits?*
- 3) *Asked for a copy of any resolutions or policies that deal with these two questions.*

Additionally, staff was asked if they ever had a conversation about selling water outside the City limits or requiring annexation of properties that are requesting water. There were also questions about a stand pipe policy. Mr. Hill will look into these questions and report back to Council.

## **11. Public Participation**

Rudy Preston, Flagstaff resident, addressed the Council about Snowbowl in comparison to the Civil Rights Ordinance.

**12. Informational Items To/From Mayor, Council, and City Manager.**

Councilmember Brewster asked for an update on the proposed development on Franklin and South San Francisco and an update on the status of the Downtown and Fourth Street Manager.

Vice Mayor Evans commented on the old Nissan dealership, noting that it has been vacant for well over three years and complaints are coming in from residents. She asked staff to provide an update and timeline. Councilmember Woodson added that there is security fencing that is blocking the sidewalk on Arrowhead.

Councilmember Oravits stated that he accompanied Senator Crandell and Representative Thorpe to tour the Center for Microbial Genetics and Genomics at NAU, and it was a very interesting tour.

Kevin Burke said that he attended the Compounds of Emerging Concerns on Friday, and although they were missing one of the star panelists he thought the format worked very well. He is excited to go to the next meeting. They will be refining their notes and providing a summary of the next step.

Councilmember Barotz stated that she also attended that event and said that the way the tables were set up was great and suggested it for future budget retreats.

**13. Adjournment**

The Flagstaff City Council Work Session of January 29, 2013, adjourned at 9:49 p.m.

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MAYOR

ATTEST:

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CITY CLERK



## CITY OF FLAGSTAFF

### STAFF SUMMARY REPORT

**To:** The Honorable Mayor and Council  
**From:** James Duval, Sr. Project Manager - Duval  
**Date:** 01/30/2013  
**Meeting Date:** 02/05/2013



#### TITLE:

**Consideration and Approval of Grant:** Arizona Department of Transportation Intergovernmental Agreement for the Pine Knoll Safe Routes to School Project.

#### RECOMMENDED ACTION:

Approve the Intergovernmental Agreement (IGA) with Arizona Department of Transportation Safe Routes to School Program for grant funds in the amount of \$400,128.00 and designate the Arizona Department of Transportation as the authorized agent for the City.

#### Policy Decision or Reason for Action:

Approval of the Intergovernmental Agreement (IGA)/Joint Project Agreement (JPA) between the Arizona Department of Transportation (ADOT) and the City will allow the project to move forward with on-street bike lanes and off-street trail improvements for the Pine Knoll Drive Safe Routes to School Project. Endorsement of the IGA/JPA authorizes ADOT to execute the work for the project including management and delivery of design, procurement and construction.

**Subsidiary Decisions Points:** No subsidiary decision points.

#### Financial Impact:

The current total estimated cost for the project is \$400,128 and is detailed as follows:

<u>Design</u>	<u>Construction</u>	<u>Total</u>
111,485	288,643	400,128

The Safe Routes to School grant is capped at a maximum of \$400,128. The City is responsible for costs above the \$400,128 cap and any project overruns.

#### Connection to Council Goal:

Maintain and deliver quality, reliable infrastructure.

#### Has There Been Previous Council Decision on This:

No specific Council action has been issued with respect to the Safe Routes to School grant.

## **Options and Alternatives**

Approve the IGA/JPA to provide \$400,128 in Safe Routes to School grant funding.

Reject the IGA/JPA which would forfeit \$400,128 in Safe Routes to School grant funding and necessitate the suspension or cancellation of the project.

## **Background/History:**

In 2010, the FMPO and Flagstaff Unified School District (FUSD) resumed coordination of the project in an effort to receive a Safe Routes To School grant. On May 13, 2010 the FUSD formally committed to allow the project to cross FUSD property. On May 31, 2011 the Arizona Department of Transportation notified the Flagstaff Metropolitan Planning Organization that the Safe Routes to School grant had been awarded in the amount of \$400,128.

## **Key Considerations:**

The \$400,128 Safe Routes to School grant was awarded through the State of Arizona and will be applied to the project's design and construction. ADOT will administer the design and construction of the project. The IGA/JPA outlines the terms and requirements of the grant and the City and ADOT's respective responsibilities.

## **Expanded Financial Considerations:**

The project is funded in the amount of \$80,000 in FY13 (account number 051-7580-632) to cover work order charges for internal staff time (Engineering Project Management) and project incidentals.

## **Community Benefits and Considerations:**

Pine Knoll Drive between Lone Tree Road and San Francisco Street has been identified by the Flagstaff MPO and FUSD as a high use connector for students attending Kinsey School. This segment of Pine Knoll has no existing sidewalk or on street bike path. Additionally there is a missing segment of the Flagstaff Urban Trail System (FUTS) between the existing FUTS trails to the west along San Francisco Street on the Northern Arizona University (NAU) campus and to the east along Lone Tree Road. As a result, approximately 50 students from the South Campus Family Housing at NAU do not have a safe place to walk or bike in the last block leading up to Kinsey School. Kinsey School currently has a bicycle and pedestrian education program for students in grades 3 through 5 and encourages students to bike or walk when possible. Pine Knoll in this area has a speed limit of 25 MPH and average daily traffic volume of 4,350 vehicles. The street is not well lit, and curves in the road create poor sight distances and visibility problems for pedestrians and bicyclists. There are no curbs or barriers along Pine Knoll Drive to separate vehicular traffic from pedestrians and bicyclists.

Approval of the IGA/JPA will start the process for design and construction of the on-street bike lanes, off-street bike/pedestrian path and edge improvements on the north side to mitigate potential safety issues along Pine Knoll Drive and to provide continuity between the San Francisco Street and Lone Tree Road multi-purpose paths.

## **Community Involvement:**

There has been no specific community involvement directly related to this Intergovernmental Agreement.

## **Council Action:**

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**Attachments:**     Intergovernmental Agreement #12-083 Pine Knoll Drive  
                             Map

ADOT File No.: IGA/JPA 12-083I  
AG Contract No.: P001 12012003775  
Project: Shared-use Pathway  
Section: Pine Knoll Drive; San Francisco  
Street to Lone Tree Road  
**Federal Project No.: FLA-0(214)T**  
**ADOT Project No.: SF01201C\_01D\_02D**  
**TIP/STIP No.: FY 13-17 f71303**  
**Budget Source Item No.: 79414 &  
79413**

## **INTERGOVERNMENTAL AGREEMENT**

BETWEEN  
THE STATE OF ARIZONA  
AND  
CITY OF FLAGSTAFF

**THIS AGREEMENT** is entered into this date \_\_\_\_\_, 2013, pursuant to the Arizona Revised Statutes § 11-951 through § 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State" or "ADOT") and the CITY OF FLAGSTAFF, acting by and through its MAYOR and CITY COUNCIL (the "City"). The State and the City are collectively referred to as "Parties."

### **I. RECITALS**

1. The State is empowered by Arizona Revised Statutes § 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.
  2. The City is empowered by Arizona Revised Statutes § 48-572 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.
  3. The Safe Routes to School Program (SRTS) was established in August 2005 as part of SAFETEA-LU, Section 1404 of this legislation provides funding (for the first time) for State Departments of Transportation to create and administer SRTS programs. The State and City have identified the project within the City as eligible for this funding.
  4. The work proposed under this Agreement consists of the design and construction of a 10'-wide concrete shared-use pathway along the north side of Pine Knoll Drive between San Francisco Street and Lone Tree Road, south of the Lura Kinsey Community School campus, hereinafter referred to as the "Project". The Project will provide a direct connection between the concrete path and back entrances to the school. The Project will also widen Pine Knoll Drive to allow for 4-foot bike lanes on both sides of the roadway between San Francisco Street and Lone Tree Road. The City will review and provide input into the design of the project and contract documents and the State will administer the design contract and billing activity, advertise construction of the project for bids, award the contract, and administer construction of the Project.
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5. The interest of the State in this Project is the acquisition of federal funds for the use and benefit of the City and to authorize such federal funds for the Project pursuant to federal law and regulations. The State shall be the designated agent for the City.

6. The Parties shall perform their responsibilities consistent with this Agreement and any change or modification to the Project will only occur with the mutual written consent of both Parties.

7. The federal funds will be used for the design and construction of the Project, including the construction engineering and administration cost (CE). The estimated Project costs are as follows:

**SF012 02D - Design (preliminary & environmental engineering):**

Federal-aid funds @ 100% (capped)	\$ 106,485.00
Federal-aid funds for design review fee (SF01201D)*	<u>\$ 5,000.00</u>
<b>Subtotal – Design</b>	<b>\$ 111,485.00</b>

**SF012 01C (construction):**

Federal-aid funds @ 100% (capped)	<u>\$ 288,643.00</u>
<b>Subtotal – Construction** (State administered)</b>	<b>\$ 288,643.00</b>

**Summary:**

<b>Total capped amount of federal funds</b>	<b><u>\$ 400,128.00</u></b>
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<b>TOTAL Estimated Project Cost**</b>	<b>\$ 400,128.00</b>
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\* (Not a fixed amount)

\*\* (Includes 15% for construction engineering and 5% for construction contingencies)

The Parties acknowledge that the final costs may exceed the available federal funds shown above, and in such case the City will be responsible for, and agrees to pay the overage. If the final bid amount is less than the initial estimate, the difference between the final bid amount plus below the line costs, and the initial estimate, will be de-obligated or otherwise released from the Project. The City acknowledges it remains responsible for, and agrees to pay according to the terms of this Agreement, any and all eventual, actual costs exceeding the available federal funds.

**THEREFORE**, in consideration of the mutual Agreements expressed herein, it is agreed as follows:

## **II. SCOPE OF WORK**

### **1. The State will:**

a. On behalf and with consent of the City, contract with one of the State's on-call consultants ("Consultant") to prepare all pertaining documents for the design and post-design of the project; review and approve documents required by FHWA to qualify the Project for and to receive federal funds, provide comments to the City as appropriate. Such documents may consist of, but are not specifically limited to, environmental documents, including the preparation of the analysis requirements for documentation of environmental categorical exclusion determinations; review of reports, design plans, maps, and specifications; geologic materials testing and analysis; right-of-way requirements and activities, letters and clearances from utilities companies, and such other related tasks essential to the achievement of the objectives of this Agreement. Issue the right of way and utility clearances after review of the Consultant's right of way and utility submittals.

b. Submit all documentation required to FHWA containing the above-mentioned Project with the recommendation that funding be approved for design and construction. Request the maximum programmed federal funds for the design and construction of this Project. The Project will be performed, completed, accepted and paid for in accordance with the requirements of Project plans and specifications.

c. Upon authorization by FHWA and with the aid and consent of the City and the FHWA, the State will proceed to advertise for, receive and open bids subject to the concurrence of the FHWA and the City, to whom the award is made for and enter into a contract(s) with a firm(s) for the construction of the Project.

d. Invite the City to participate in all formal walk-through inspections of the work including final inspection for acceptance. Notify the City that the Project has been completed and is considered acceptable, coordinating with the City as appropriate and to turn over full responsibility of the Project improvements to the City. De-obligate or otherwise release any remaining federal funds from the construction phase of the Project.

e. Not be obligated to maintain said Project, should the City fail to budget or provide for proper and perpetual maintenance as set forth in this Agreement.

### **2. The City will:**

a. Upon execution of this Agreement, designate the State as authorized agent for the City.

b. Allow the State to enter into an agreement with the selected Consultant to provide services as required and requested throughout the design and post-design of the project. Review the design plans, specifications and other such documents and services required for the construction bidding and construction of the Project, including design plans and documents required by FHWA to qualify projects for and to receive federal funds. Provide design review comments to the State as appropriate including review of final PS&E for City approval of the contract bid documents prior to the State advertising the project for bids.

c. Assist the State and its on-call design consultant with all right of way activities and functions performed by the Consultant, including, but not specifically limited to, right of way survey, delineation, appraisal, review appraisal, acquisition, relocation and property management.

d. Be entirely responsible for all costs incurred in performing and accomplishing the work as set forth under this Agreement, if the City is unable to reduce the scope of the project to meet available federal funds. Should costs be deemed ineligible or exceed the maximum federal funds available, it is understood and agreed that the City is responsible for these costs.

e. Certify that all necessary rights-of-way have been or will be acquired prior to advertisement for bid and also certify that all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the Project area, shall be removed from the proposed right-of-way, or will be removed prior to the start of construction, in accordance with The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended; 49 CFR 24.102 Basic Acquisition Policies; 49 CFR 24.4 Assurances, Monitoring and Corrective Action, parts (a) & (b) and ADOT ROW Manual: 8.02 Responsibilities, 8.03 Prime Functions, 9.07 Monitoring Process and 9.08 Certification of Compliance. Coordinate with the appropriate State's Right-of-Way personnel during any right-of-way process performed by the City, if applicable.

f. Not permit or allow any encroachments upon or private use of the area within the construction limits, except those authorized by permit. In the event of any unauthorized encroachment or improper use, the City shall take all necessary steps to remove or prevent any such encroachment or use.

g. Hereby grant the State, its agents and/or contractors, without cost, the right to enter City Rights-of-Way, as required, to conduct any and all design, construction, and preconstruction related activities.

h. Submit the following progress reports and project evaluation forms as required by the Federal Safe Routes to School Program and State Program:

(i) Before the Safe Routes to Schools (SRTS) Coordinator will issue a "Notice of Proceed: (NTP) that SRTS program funding can be used for the project's eligible activities, baseline data must be collected and submitted to the SRTS coordinator during the first full school month after the project kick-off meeting.

(ii) At project completion (before the final reimbursement request is submitted) complete and submit the Project Close-Out Evaluation Form,

(iii) Twice annually, attached to a corresponding quarterly reimbursement request, submit a report of the program's progress as identified in the project to the ADOT Safe Routes to School Coordinator. The report should not be more than one page length.

i. Be obligated to incur any expenditure should unforeseen conditions or circumstances increase the cost of said work required by a change in the extent of scope of the work requested by the City. Such changes require the prior approval of the State and FHWA. Be responsible for any contractor claims for additional compensation caused by Project delays attributable to the City. Payment for these costs shall be made within thirty (30) days of receipt of an invoice from the State.

j. Upon completion of the Project, assume responsibility for maintenance of the Project, at its own expense and as an annual item in its budget. Provide perpetual and proper maintenance of the Project through the duration of the expected useful life of the materials as constructed in place.

k. Pursuant to 23 USC 102(b), repay all federal funds reimbursements for preliminary engineering costs on the Project if it does not advance to right of way acquisition or construction within ten (10) years after federal funds were first made available for reasons attributable to the City or School District.

### **III. MISCELLANEOUS PROVISIONS**

1. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion of said Project and related deposits or reimbursement, except any provisions for maintenance shall be perpetual, unless assumed by another competent entity. Further, this Agreement may be cancelled at any time prior to the award of the Project construction contract, upon thirty (30) days written notice to the other party. It is understood and agreed that, in the event the City terminates this Agreement, the State shall in no way be obligated to maintain said Project. If the federal funding related to this Project is terminated or reduced by the federal government, or if Congress rescinds, fails to renew, or otherwise reduces apportionments or obligation authority, the State shall in no way be obligated for funding or liable for any past, current or future expenses under this agreement.

2. The State assumes no financial obligation or liability under this Agreement, or for any resulting construction Project. The City, in regard to the City's relationship with the State only, assumes full responsibility for the design, plans, specifications, reports, the engineering in connection there with and the construction of the improvements contemplated, cost over-runs and construction claims. It is understood and agreed that the State's participation is confined solely to securing federal aid on behalf of the City and the fulfillment of any other responsibilities of the State as specifically set forth herein; that any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof shall be solely the liability of the City and that to the extent permitted by law, the City hereby agrees to save and hold harmless, defend and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all costs and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, misrepresentation, directives, instruction or event arising out of the performance or non-performance of any provisions of this Agreement by the State, any of its departments, agencies, officers and employees, or its independent contractors, the City, any of its agents, officers and employees, or its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation and attorneys' fees.

3. The cost of work covered by this Agreement is to be borne by FHWA and the City, each in the proportion prescribed or as fixed and determined by FHWA as stipulated in this Agreement. Therefore, the City agrees to furnish and provide the difference between the total cost of the work provided for in this Agreement and the amount of federal aid received.

4. The cost of the project under this Agreement includes applicable indirect costs approved by the FHWA.

5. The Parties warrant compliance with the Federal Funding Accountability and Transparency Act of 2006 and associated 2008 Amendments (the "Act"). Additionally, in a timely manner, the City will provide information that is requested by the State to enable the State to comply with the requirements of the Act, as may be applicable.

6. This Agreement shall become effective upon signing and dating of the Determination Letter by the State's Attorney General.

7. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

8. To the extent applicable under law, the provisions set forth in Arizona Revised Statutes § 35-214 and § 35-215 shall apply to this Agreement.

9. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable Federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 2009-09 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

10. Non-Availability of Funds: Every obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the fulfillment of such obligations. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments as a result of termination under this paragraph.

11. In the event of any controversy, which may arise out of this Agreement, the Parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

12. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail, addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 S. 17<sup>th</sup> Avenue, Mail Drop 637E  
Phoenix, Arizona 85007  
(602) 712-7124  
(602) 712-3132 Fax

**City of Flagstaff**  
Attn: Christine Cameron  
Project Manager  
211 W. Aspen Avenue  
Flagstaff, AZ 86001  
(928) 213-2682  
[ccameron@flagstaffaz.gov](mailto:ccameron@flagstaffaz.gov).

**Administrative Contact**  
Stacey Brechler-Knaggs,  
Grant Manager  
211 W. Aspen Avenue  
Flagstaff, AZ 86001  
(928) 213-2227  
[sknaggs@flagstaffaz.gov](mailto:sknaggs@flagstaffaz.gov)



13. The Parties shall comply with the applicable requirements of Arizona Revised Statutes § 41-4401.

14. Pursuant to Arizona Revised Statutes § 35-391.06 and § 35-393.06, each Party certifies that it does not have a scrutinized business operation in Sudan or Iran. For the purpose of this Section the term "scrutinized business operations" shall have the meanings set forth in Arizona Revised Statutes § 35-391 and/or § 35-393, as applicable. If any Party determines that another Party submitted a false certification, that Party may impose remedies as provided by law including terminating this Agreement.

15. The Parties hereto shall comply with all applicable laws, rules, regulations and ordinances, as may be amended.

16. In accordance with Arizona Revised Statutes § 11-952 (D) attached hereto and incorporated herein is the written determination of each party's legal counsel and that the Parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

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**IN WITNESS WHEREOF**, the Parties have executed this Agreement the day and year first above written.

**CITY OF FLAGSTAFF**

By \_\_\_\_\_  
**JERRY NABOURS**  
Mayor

**STATE OF ARIZONA**

Department of Transportation

By \_\_\_\_\_  
**DALLAS HAMMIT, P.E.**  
Senior Deputy State Engineer, Development

ATTEST:

By \_\_\_\_\_  
**ELIZABETH BURKE**  
City Clerk

01022013

**IGA/JPA 12-083I**

**ATTORNEY APPROVAL FORM FOR THE CITY OF FLAGSTAFF**

I have reviewed the above referenced Intergovernmental Agreement between the State of Arizona, acting by and through its DEPARTMENT OF TRANSPORTATION, and the City of Flagstaff, an Agreement among public agencies which, has been reviewed pursuant to A.R.S. § 11-951 through § 11-954 and declare this Agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona.

No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
City Attorney



# Pine Knoll Safe Routes to School Project



Title: Pine Knoll Safe Routes to School Project

COF Proj. No. 758000

COF File No. 03-12002

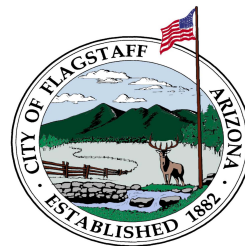
0 85 170 340 510 680 Feet

January 29, 2013



## CITY OF FLAGSTAFF STAFF SUMMARY REPORT

**To:** The Honorable Mayor and Council  
**From:** David Wessel, Metro Planning Org Manager  
**Date:** 01/30/2013  
**Meeting Date:** 02/05/2013



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### TITLE:

**Consideration and Approval of Purchase with Grant Funds:** Accept proposal from Parsons-Brinckerhoff for services to develop the FMPO (Flagstaff Metropolitan Planning Organization) Transportation Benefit Cost Analysis (BCA) tool at a cost not to exceed \$60,000.

### RECOMMENDED ACTION:

Approve the proposal for services from Parsons Brinckerhoff in the amount of \$60,000 to be paid with federal Surface Transportation Program (STP) funds passed through the Arizona Department of Transportation (ADOT) to the Flagstaff Metropolitan Planning Agency.

### Policy Decision or Reason for Action:

Employing a benefit cost analysis recognizes that funding is constrained and requires well-informed and economically prudent investment decisions. Many transportation projects are estimated to cost in excess of \$20 million, some in excess of \$50 million. A benefit cost analysis can assist with the planning of these facilities, such as advisability of changes to increase benefits or lower costs; the timing of project construction at a point when levels of development will be high enough to achieve sufficient benefits; and partnerships whereby prospective agencies can assess benefits that accrue to them, thereby justifying the partnership.

**Subsidiary Decisions Points:** A benefit cost analysis tool will aid in the evaluation and prioritization of transportation projects, comparison of alternative improvements, and help to meet anticipated grant application requirements. This activity is in the approved FMPO Work Program and represented in the City budget. Project 2013-07 scope of work was developed with input from technical staff and the FMPO Executive Board. It was placed out to bid by the City on behalf of the FMPO. Four proposals were received and reviewed by a committee comprised of two individuals from the City, one from NAIPTA and one from the FMPO.

### Financial Impact:

Cost for the services will not exceed \$56,400 in FMPO STP grant funds and \$3,600 in FMPO local general funds to meet grant match requirements. The FMPO receives federal funding for two purposes: planning and construction. All funds are passed through the Arizona Department of Transportation. Virtually all funds require matching local dollars or in-kind match at 6% or 20% rate depending on fund category. Planning dollars support basic FMPO operations and some planning activities. Construction dollars are occasionally transferred for use in planning activities, as they are in this case.

**Connection to Council Goal:**

Repair, replace, and maintain infrastructure (streets & utilities) - maintenance and capital dollars typically come from the same sources. Thorough analysis and strategic prioritization and timing of major capital projects assists in spending all funds more effectively.

Retain, expand, and diversify economic base - benefit cost analysis will add to the understanding of transportation's impact on the economy. Economic development is one of several criteria used to evaluate transportation projects.

Effective governance - adding benefit cost analysis to the decision-making toolbox can help make decision more effective.

**Has There Been Previous Council Decision on This:**

No.

**Options and Alternatives:**

1. Approve the award to Parsons-Brinckerhoff - work will proceed on schedule. **Recommended**
2. Remand the decision to the FMPO for further evaluation of the proposals - work will be delayed with potential disruption to FY 2014 work program elements such as the update to the FMPO Regional Transportation Plan.
3. Remand the decision to the FMPO Executive Board for reconsideration of their work program - potential program delays and implications for re-programming of grant funds.

**Background/History:**

Flagstaff Metropolitan Planning Organization is a federally mandated entity charged with regional transportation planning and hosted by the City of Flagstaff. FMPO produces a regional transportation plan and an annual work program to assist in the implementation of that plan. The FMPO Executive Board has asked for benefit cost analysis of different transportation projects to better understand their value.

**Key Considerations:**

The Transportation Benefit Cost Analysis (BCA) tool will equip FMPO staff to analyze projects across modes (e.g., transit vs. highways) and across geographies (e.g., urban vs. rural). FMPO staff intends to use the tool to evaluate all projects under consideration in the regional transportation plan and to include the BCA with other criteria (e.g., environmental impacts, social impacts) in ranking and scheduling of projects.

**Community Benefits and Considerations:**

As a result of the development and implementation of the Transportation BCA tool, the public should enjoy better informed decisions regarding transportation improvements.

**Community Involvement:**

Inform - the BCA results will take systematic inputs and place them in a standardized analysis making them more accessible to the public.

**Expanded Options and Alternatives:**

1. Approve the award to Parsons-Brinckerhoff - work will proceed on schedule. **Recommended**
2. Remand the decision to the FMPO for further evaluation of the proposals - work will be delayed with potential disruption to FY 2014 work program elements such as the update to the FMPO Regional Transportation Plan.
3. Remand the decision to the FMPO Executive Board for reconsideration of their work program - potential program delays and implications for re-programming of grant funds.

**Council Action:**

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**Attachments:**

**CITY OF FLAGSTAFF**  
**STAFF SUMMARY REPORT**

**To:** The Honorable Mayor and Council  
**From:** Barbara Goodrich, Management Services  
Director  
**Date:** 01/30/2013  
**Meeting** 02/05/2013  
**Date:**



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**TITLE:**

**Consideration and Adoption of Ordinance No. 2013-03:** An ordinance of the Council of the City of Flagstaff, Coconino County, Arizona, approving and authorizing the sale and issuance of City of Flagstaff, Arizona General Obligation Bonds, Series 2013, in the total aggregate principal amount of not to exceed \$13,000,000 and all matters related thereto; prescribing certain terms and conditions of such bonds including the delegation to the Management Services Director of the City to designate the final principal amount, maturities, interest rates and yields and other matters with respect to such bonds; awarding a contract for the purchase of such bonds; ratifying the distribution of a Preliminary Official Statement and approving a final Official Statement. (\$3 million for Picture Canyon/2004; \$6.5 Million for Street Utility Bonds/2010; \$2 Million for Forest Health/2012)

**RECOMMENDED ACTION:**

- 1) Read Ordinance No. 2013-03 by title only for the first time on February 5, 2013.
- 2) Read Ordinance No. 2013-03 by title only for the second time on February 19, 2013.
- 3) Adopt Ordinance No. 2013-03 on February 19, 2013.

**Policy Decision or Reason for Action:**

This ordinance allows for the issuance of General Obligation debt as approved by voters in 2004, 2010, and 2012.

**Financial Impact:**

The General Obligation (GO) debt issuance has been budgeted for FY2013 and will be paid through secondary property taxes. It is currently anticipated to issue a total of approximately \$12 million dollars in GO bonds to include \$3 million for Open Space to reimburse the City for the Picture Canyon purchase as authorized in 2004; \$6.5 million for the remaining balance of Street Utility bonds as authorized in 2010; and \$2 million for Forest Health work as authorized in 2012.

**Connection to Council Goal:**

Repair Replace maintain infrastructure (streets & utilities)  
Effective governance

**Has There Been Previous Council Decision on This:**

Yes. Council approved all bond questions that went to the voters. Council approved Reimbursement Resolution 2012-037 on 10/16/12 related to the Open Space and Street/Utility projects.

**Options and Alternatives:**

Approve the Ordinance as written allowing the City to move forward expeditiously in issuing debt.  
Approve the Ordinance with changes in authorized personnel and/or the amount of debt.  
Reject the Ordinance and direct staff to find alternate funding sources.

**Background/History:**

On May 18, 2004, City voters approved ten capital projects, one of which was for \$7.6 million dollars for Neighborhood Open Space and FUTS Land Acquisition. In 2012, the City of Flagstaff successfully purchased Picture Canyon for approximately \$5 million dollars of which \$2.4 million dollars was recaptured through an Arizona State Parks Growing Smarter grant. This request is to issue \$3 million dollars in general obligation debt to repay the City for expenditures incurred to date and in anticipation of the 2014 FUTS and Open Space work program.

On November 2, 2010, City voters approved two capital projects, one of which was for \$16.5 million dollars for Street and Utilities Improvements. The City has been completing numerous projects throughout the City and all work is anticipated to be complete in the fall of 2013. Approximately \$10 million dollars of this debt was previously issued and this action will issue the remaining authority.

On November 6, 2012, City voters approved two capital projects, one of which was for \$10 million dollars for the Forest Health and Water Supply Protection Project. This request is to issue \$2 million of the total authorized. Two million dollars is anticipated to fund these activities for two years.

**Key Considerations:**

The City has already advanced the funds for the Picture Canyon purchase and needs to reimburse itself as Council authorized in Reimbursement Resolution 2012-37 on October 16, 2012.

In addition, the Reimbursement Resolution also authorized the City to reimburse itself for expenditures incurred as related to the Street/Utility improvements. A portion of the expenditures will likely exceed the bonds currently issued but the City is kept whole through the Reimbursement Resolution. The entire project is anticipated to be complete by the fall of 2013.

The Forest Health initiative is still in the planning stages and the City is recommending to issue this debt approximately every two years as the work plan develops and appropriate contracts are put into place.

**Expanded Financial Considerations:**

This debt is currently anticipated to be issued for 15 years at a rate at something less than 3%. The City is timing this debt issuance to be in advance of numerous other offerings that could saturate the market. Issuing the debt for 15 years will maximize the secondary property tax rate as currently set and will draw down a portion of the accumulated fund balance. The fund balance can only be used for the payment of general obligation debt. As directed by Council, staff is anticipating setting future rates to maintain a flat revenue and will bring forward alternate rate setting proposals if necessary to support future debt issues.

After the City issues the debt as requested through this ordinance, the remaining authorized projects as supported by General Obligation bonds are as follows:

1996 = Parks and Recreation - \$1.1 million  
2004 - Neighborhood Open Space and FUTS Land Acquisition - \$2.2 million  
2004 - Regional Open Space - Observatory Mesa - \$5.5 million  
2004 - Lake Mary Regional Park and Other Park Land Acquisitions - \$2.8 million  
2012 - Forest Health and Water Supply Protection Project - \$8 million  
2012 - Core Services Maintenance Facility - \$14 million



**Community Benefits and Considerations:**

Empower - The decision to authorize these projects and issue the debt was the public's.

**Community Involvement:**

The community was involved through the elections held in 2004, 2010, and 2012.

In addition, the City formed a Bond Advisory Task Force for the 2004 and 2010 elections. In advance of all three elections, the City provided numerous presentations to the public both on-site and off-site of City Hall, as well as regular updates at the regular Council work sessions and/or meetings.

**Expanded Options and Alternatives:**

Approve the Ordinance as written allowing the City to move forward expeditiously in issuing debt.

Approve the Ordinance with changes in authorized personnel and/or the amount of debt.

Reject the Ordinance and direct staff to find alternate funding sources.

**Council Action:**

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**Attachments:**     Ord. No. 2013-03

ORDINANCE NO. 2013-03

AN ORDINANCE OF THE COUNCIL OF THE CITY OF FLAGSTAFF, COCONINO COUNTY, ARIZONA, APPROVING AND AUTHORIZING THE SALE AND ISSUANCE OF CITY OF FLAGSTAFF, ARIZONA GENERAL OBLIGATION BONDS, SERIES 2013, IN THE TOTAL AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED \$13,000,000 AND ALL MATTERS RELATED THERETO; PRESCRIBING CERTAIN TERMS AND CONDITIONS OF SUCH BONDS INCLUDING THE DELEGATION TO THE MANAGEMENT SERVICES DIRECTOR OF THE CITY TO DESIGNATE THE FINAL PRINCIPAL AMOUNT, MATURITIES, INTEREST RATES AND YIELDS AND OTHER MATTERS WITH RESPECT TO SUCH BONDS; AWARDING A CONTRACT FOR THE PURCHASE OF SUCH BONDS; RATIFYING THE DISTRIBUTION OF A PRELIMINARY OFFICIAL STATEMENT AND APPROVING A FINAL OFFICIAL STATEMENT

**RECITALS:**

WHEREAS, at a special bond election held in and for the City of Flagstaff, Arizona (the "City"), on May 18, 2004 (the "2004 Election"), there was submitted to the qualified electors thereof, among others, the following question:

**QUESTION NO. 302**

Purpose: **Neighborhood Open Space and FUTS Land Acquisition**  
Amount: **\$7,600,000**

To provide neighborhood open spaces and land for the Flagstaff Urban Trail System, shall the City of Flagstaff be authorized to sell and issue general obligation bonds in the principal amount of up to \$7,600,000:

- for the acquisition of up to approximately 550 acres of open space lands in and around the City's neighborhoods consisting of wildlife habitat, geological features, riparian and scenic areas, and buffers spread throughout the City and for the connection of neighborhoods, parks, schools, employment, shopping and other areas with approximately 50 miles of the Flagstaff Urban Trails System; and
- 
- to pay all costs and expenses properly incidental thereto and to the issuance of bonds?

The bonds will be in one or more series, will not mature more than 25 years from the date or dates of their issuance, will bear interest at a rate or rates not to exceed 10% per annum, and will have such other provisions as are approved by the City Council.

A vote for the bonds shall have the effect of allowing the City Council to issue up to \$7,600,000 in general obligation bonds for acquisition of land for the provision of neighborhood open spaces and the Flagstaff Urban Trails System.

***For the  
Bonds***

☐

A vote against the bonds shall have the Effect of not allowing the City Council to issue up to \$7,600,000 in general obligation bonds for acquisition of land for the provision of neighborhood open spaces and the Flagstaff Urban Trails System.

***Against the  
Bonds***

☐

WHEREAS, the returns of the 2004 Election were duly canvassed by the Mayor and Council of the City and a certificate disclosing the purpose of the 2004 Election, the total number of votes cast thereat, the total number of votes for and against the issuance of such bonds, and stating that the creation of the indebtedness by the issuance of the bonds in accordance with the question was ordered and has been filed and recorded in the office of the County Recorder of Coconino County, Arizona; and

WHEREAS, a majority of the qualified electors of the City, voting at the 2004 Election voted "For the Bonds," in answer to such Question submitted; and

WHEREAS, at a special bond election held in and for the City on November 2, 2010 (the "2010 Election"), there was submitted to the qualified electors thereof, among others, the following question:

**QUESTION NO. 104**

Purpose: **Street and Utilities Improvements**  
Amount: **\$16,500,000**

To provide for street, utilities and related improvements, shall the City of Flagstaff be authorized to sell and issue general obligation bonds in a principal amount up to \$16,500,000:

- for the purpose of pavement preservation, sidewalk construction or replacement, utility, gutter and drainage construction, replacement or relocation and related appurtenances at one or more locations to be determined and
- to pay all costs and expenses properly incidental thereto and to the issuance of bonds?

The bonds may be issued in one or more series, will not mature more than 25 years from the date or dates of their issue, will bear interest at a rate or rates not to exceed 10% per annum, and will have such other provisions as are approved by the City Council. The following sentence has been included on this ballot as required by Arizona Revised Statutes 35-454(D): The issuance of these bonds will result in a property tax increase sufficient to pay the annual debt service on the bonds.

A vote for the bonds shall have the effect of allowing the City Council to issue up to \$16,500,000 in general obligation bonds for street and utilities improvements.

**For the  
Bonds**

☐

A vote against the bonds shall have the effect of not allowing the City Council to issue up to \$16,500,000 in general obligation bonds for street and utilities improvements.

**Against the  
Bonds**

☐

WHEREAS, the returns of the 2010 Election were duly canvassed by the Mayor and Council of the City and a certificate disclosing the purpose of the 2010 Election, the total number of votes cast thereat, the total number of votes for and against the issuance of such bonds, and stating that the creation of the indebtedness by the issuance of the bonds in accordance with the question was ordered and has been filed and recorded in the office of the County Recorder of Coconino County, Arizona; and

WHEREAS, a majority of the qualified electors of the City, voting at the 2010 Election voted "For the Bonds," in answer to such Question submitted; and

WHEREAS, at a special bond election held in and for the City on November 6, 2012 (the "2012 Election" and, with the 2004 Election and the 2010 Election, the "Elections"), there was submitted to the qualified electors thereof, among others, the following question:

**QUESTION NO. 101**

Purpose: **Forest Health and Water Supply Protection Project**  
Amount: **\$10,000,000**

To prevent flood damage to the City of Flagstaff ("City"), and to protect the City water supply from damages which occur from large-scale and/or severe wildfire(s) in two watersheds serving the City, shall the City be authorized to sell and issue general obligation bonds in a principal amount up to \$10,000,000:

- to expedite and conduct forest treatments in the Dry Lake Hills watershed north of town to reduce wildfire threat, thereby

mitigating subsequent flooding to Sunnyside, downtown, the NAU campus, and neighborhoods bordering the Rio de Flag;

- to plan and conduct forest treatments in the Lake Mary watershed south of the City to reduce wildfire threat, thereby protecting the storage capacity and water quality of Lake Mary; and
- to pay all costs and expenses properly incidental thereto and to the issuance of bonds?

The bonds may be issued in one or more series, will not mature more than 25 years from the date or dates of their issue, will bear interest at a rate or rates not to exceed 10% per annum, and will have such other provisions as are approved by the City Council. The following sentence has been included on this ballot as required by Arizona Revised Statutes 35-454(C): The issuance of these bonds will result in a property tax increase sufficient to pay the annual debt service on the bonds.

A vote for the bonds shall have the effect of allowing the City Council to issue up to \$10,000,000 in general obligation bonds for planning and implementation of forest health and water supply protection projects.

**For the  
Bonds**

☐

A vote against the bonds shall have the effect of not allowing the City Council to issue up to \$10,000,000 in general obligation bonds for planning and implementation of forest health and water supply protection projects.

**Against the  
Bonds**

☐

WHEREAS, the returns of the 2010 Election were duly canvassed by the Mayor and Council of the City and a certificate disclosing the purpose of the 2012 Election, the total number of votes cast thereat, the total number of votes for and against the issuance of such bonds, and stating that the creation of the indebtedness by the issuance of the bonds in accordance with the question was ordered and has been filed and recorded in the office of the County Recorder of Coconino County, Arizona; and

WHEREAS, a majority of the qualified electors of the City, voting at the 2012 Election voted "For the Bonds," in answer to such Question submitted; and

WHEREAS, the Mayor and Council of the City have determined to sell and issue a portion of the remaining amounts of such bonds (the " Bonds") for the purposes granted at the Elections; and

WHEREAS, the Mayor and Council of the City will receive a proposal from RBC Capital Markets, LLC (the "Underwriter") for the

purchase of the Bonds and have determined that the Bonds be sold through negotiation to the Underwriter; and

WHEREAS, all things required to be done preliminary to the authorization, sale and issuance of the Bonds have been duly done and performed in the manner required by law, and the Mayor and Council of the City are now empowered to proceed with the sale and issuance of the Bonds.

**ENACTMENTS:**

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:

Section 1. (a) The Bonds, to provide funds for purposes set forth in the above-mentioned forms of ballot questions submitted to the qualified electors of the City at the Elections, are hereby authorized to be sold and issued.

(b) The Bonds constitute the third series of bonds of a total authorized amount of not to exceed \$94,000,000 principal amount of bonds of the City approved by the qualified electors of the City at the 2004 Election; the second series of bonds of a total authorized amount of not to exceed \$21,220,000 principal amount of bonds of the City approved by the qualified electors of the City at the 2010 Election, and the first series of bonds of a total authorized amount of not to exceed \$24,000,000 principal amount of bonds of the City approved by the qualified electors of the City at the 2012 Election and are authorized by the provisions of Title 35, Chapter 3, Article 3, Arizona Revised Statutes.

(c) The proceeds from the sale of the Bonds shall be credited against the total principal amount of bonds and the specific amount of bonds so authorized by the qualified electors of the City at the Elections and for each respective purpose and project as set forth in the applicable question on the official form of ballot and the proceeds of the Bonds shall be applied to each respective purpose and project as determined by the Management Services Director of the City on behalf of the City. The indebtedness represented by the Bonds shall be applied against the City's constitutional debt limits for indebtedness which does not exceed six percent (6%) of the value of taxable property in the City.

(d) Proceeds of the sale of the Bonds shall be deposited in the treasury of the City to the credit of the "Series 2012 Construction Fund" of the City in three separate accounts as follows in the amounts determined as provided in subsection (c):

Name of Account

"Neighborhood Open Space - Series 2012"  
"Street and Utilities Account - Series 2012"  
"Forest Initiative Account - Series 2012"

to be used solely for the purposes specified in the aforementioned ballot questions submitted to the qualified electors of the City at the Elections; provided, however, that (a) such proceeds may be invested in the manner and under the circumstances allowed by law and (b) any moneys remaining in any subfund after such purposes shall have been accomplished shall be transferred to the applicable, hereinafter defined "Redemption Fund" and "Interest Fund" in the same fashion as taxes.

Section 2. The Bonds shall be designated "General Obligation Bonds, Series 2013."

Section 3. The Management Services Director of the City is hereby authorized and directed to determine on behalf of the City: (1) the sales date of the Bonds and the dated date and principal amount of the Bonds (but not to exceed \$13,000,000 principal amount) and the amounts to be allocated to each of the purposes authorized by the Elections; (2) the final principal and maturity schedule of the Bonds (but none of the Bonds to mature more than twenty (20) years from their date of issuance); (3) the interest rate on each maturity of the Bonds (but not to exceed ten percent (10%) per annum) and the dates for payment of such interest (the "interest payment dates"); (4) the provisions for redemption in advance of maturity of the Bonds; (5) the sales price and terms of the Bonds (including for underwriting compensation, original issue discount and premium) and (6) the provision for credit enhancement, if any, for the Bonds upon the advice of the Underwriter; provided, however, that such determinations must result in a yield for federal income tax purposes of not to exceed five percent (5%) with respect to the Bonds.

Section 4. (a) The Bonds shall separately be numbered, by maturity, from 1 consecutively upwards; shall be fully registered Bonds without coupons; shall be in the denomination of \$5,000 of principal or any integral multiple thereof and shall bear interest from the most recent July 1 or January 1 to which interest has been paid or duly provided for or, if no interest has been paid or duly provided for, from their date. The principal of and premium, if any, on the Bonds shall be payable upon presentation and surrender thereof at the designated corporate trust office of the Bond Registrar and Paying Agent. Interest on the Bonds shall be payable by check mailed to the registered owner thereof, as shown on the registration books for the Bonds maintained by the Bond Registrar and Paying Agent at the address appearing therein at the close of business on the 15th day of the calendar month next preceding that interest payment date (the "regular record date"). Any interest which is not timely paid or duly provided for shall cease to be payable to the registered owner thereof (or of one or more predecessor Bonds) as of the regular record date and shall be payable to the registered owner thereof (or of one or more predecessor Bonds) at the close of business on a special record date for the payment of that overdue interest. Such special record date shall be fixed by the Bond Registrar and Paying Agent whenever moneys become available for payment of the overdue interest, and notice of the special record date shall be given to the registered owners of the Bonds not less than ten (10) days prior thereto. The

principal of and interest on the Bonds shall be payable in lawful money of the United States of America.

(b) (i) The Bank of New York Mellon Trust Company, N.A. is hereby appointed as the initial bond registrar and paying agent with respect to the Bonds (the "Bond Registrar and Paying Agent"), and the Management Services Director of the City is hereby authorized and directed to execute and deliver a standard form of contract therewith covering such services, with such additions, deletions and modifications as shall be approved by the Management Services Director of the City, and such execution and delivery shall constitute conclusive evidence of the approval of such officer thereto. The Bond Registrar and Paying Agent shall maintain the books of the City for the registration of ownership of each Bond. A Bond may be transferred on the applicable registration books upon delivery of the Bond to the Bond Registrar and Paying Agent, accompanied by a written instrument of transfer in form and with guaranty of signature satisfactory to the Bond Registrar and Paying Agent, duly executed by the registered owner of the Bond to be transferred or his or her attorney-in-fact or legal representative, containing written instructions as to the details of the transfer of such Bond. No transfer of any Bond shall be effective until entered on the registration books.

(ii) In all cases upon the transfer of a Bond, the Bond Registrar and Paying Agent shall enter the transfer of ownership in the applicable registration books and will authenticate and deliver in the name of the transferee or transferees a new fully registered Bond or Bonds of the same series and the denominations of \$5,000 of principal amount or any integral multiple thereof (except that no Bond shall be issued which relates to more than a single principal maturity) for the aggregate principal amount which the registered owner is entitled to receive at the earliest practicable time in accordance with the provisions of this Section. All costs and expenses of initial registration and payment shall be borne by the City, but the City or the Bond Registrar and Paying Agent shall charge the registered owner of such Bond, for every such transfer of a Bond, an amount sufficient to reimburse them for any transfer fee, tax or other governmental charge required to be paid with respect to such transfer and may require that such transfer fee, tax or other governmental charge be paid before any such new Bond shall be delivered.

(iii) The City and the Bond Registrar and Paying Agent shall not be required (a) to issue or transfer any Bonds during a period beginning with the opening of business on the fifteenth (15th) business day next preceding either any interest payment date or any date of selection of Bonds to be redeemed and ending with the close of business on the interest payment date or day on which the applicable notice of redemption is given or (b) to transfer any Bonds which have been selected or called for redemption.



(iv) At the time of issuance thereof, the Bonds shall separately be subject to a Book-Entry System (as that term is hereinafter defined) of ownership and transfer, except as provided in subsection (3) of this subsection. The general provisions for effecting the Book-Entry System are as follows:

(1) The City hereby designates The Depository Trust Company, New York, New York, as the initial Depository (as that term is hereinafter defined) hereunder.

(2) Notwithstanding the provisions of this Section or of the Bonds to the contrary and so long as the Bonds are subject to a Book-Entry System, the Bonds shall initially be evidenced by one typewritten certificate for each maturity of such series in an amount equal to the aggregate principal amount thereof. The Bonds so initially delivered shall be registered in the name of "Cede & Co." as nominee for The Depository Trust Company. The Bonds may not thereafter be transferred or exchanged on the registration books of the City maintained by the Bond Registrar and Paying Agent except:

(A) to any successor Depository designated pursuant to subsection (3) of this subsection;

(B) to any successor nominee designated by a Depository or

(C) if the City shall elect to discontinue the Book-Entry System pursuant to subsection (3) of this subsection, the City shall cause the Bond Registrar and Paying Agent to authenticate and deliver replacement Bonds in fully registered form in authorized denominations in the names of the Beneficial Owners (as such term is hereinafter defined) or their nominees, as certified by the Depository, at the expense of the City; thereafter the other applicable provisions of this Ordinance regarding registration, transfer and exchange of the Bonds shall apply.

(3) The Bond Registrar and Paying Agent, pursuant to a request from the City for the removal or replacement of the Depository, and upon thirty (30) days' notice to the Depository, may remove or replace the Depository. The Bond Registrar and Paying Agent shall remove or replace the Depository at any time pursuant to the request of the City. The Depository may determine not to continue to act as Depository for the Bonds upon thirty (30) days written notice to the District and the Bond Registrar and Paying Agent. If the use of the Book-Entry System is discontinued, then after the Bond Registrar and Paying Agent has made provision for notification of Beneficial Owners of their book entry interests in the Bonds by appropriate

notice to the then Depository, the City and the Bond Registrar and Paying Agent shall permit withdrawal of the Bonds from the Depository and authenticate and deliver the Bond certificates in fully registered form for the applicable series and in denominations authorized by this Section to the assignees of the Depository or its nominee. Such withdrawal, authentication and delivery shall be at the cost and expense (including costs of printing or otherwise preparing, and delivering, such replacement Bond certificates) of the City.

(4) So long as the Book-Entry System is used for the Bonds, the City and the Bond Registrar and Paying Agent shall give any notice of redemption or any other notices required to be given to registered owners of Bonds only to the Depository or its nominee registered as the owner thereof. Any failure of the Depository to advise any of its participants, or of any participant to notify the Beneficial Owner, of any such notice and its content or effect shall not affect the validity of the redemption of the Bonds to be redeemed or of any other action premised on such notice. Neither the District nor the Bond Registrar and Paying Agent shall be responsible or liable for the failure of the Depository or any participant thereof to make any payment or give any notice to a Beneficial Owner in respect of the Bonds or any error or delay relating thereto.

(5) Notwithstanding any other provision of this Section or of the Bonds to the contrary, so long as the Bonds are subject to a Book-Entry System, it shall not be necessary for the registered owner to present the applicable Bond for payment of mandatory redemption installments, if any. The mandatory redemption installments may be noted on books kept by the Bond Registrar and Paying Agent and the Depository for such purpose, and the Bonds shall be tendered to the Bond Registrar and Paying Agent at their maturity.

(6) For purposes of this Section, "Beneficial Owners" shall mean actual purchasers of the Bonds and whose ownership interest is evidenced only in the Book-Entry System maintained by the Depository; "Book-Entry System" shall mean a system for clearing and settlement of securities transactions among participants of a Depository (and other parties having custodial relationships with such participants) through electronic or manual book-entry changes in accounts of such participants maintained by the Depository hereunder for recording ownership of the Bonds by Beneficial Owners and transfers of ownership interests in the Bonds and "Depository" shall mean The Depository Trust Company, New York, New York or any successor depository designated pursuant to this Section.

(c) Not more than forty-five (45) nor less than thirty (30) days before any redemption date, the Bond Registrar and Paying Agent shall cause a notice of any such redemption to be mailed by first class mail, postage prepaid, to the registered owner of each Bond to be redeemed at the address shown on the registration books maintained by the Bond Registrar and Paying Agent. Failure to mail notice to any registered owner of Bonds shall not affect the validity of the proceeding for the redemption of Bonds with respect to the registered owners of other Bonds.

Section 5. In case any Bond becomes mutilated or destroyed or lost, the City shall cause to be executed and delivered a new Bond of like type, date, maturity and tenor in exchange and substitution for and upon the cancellation of such mutilated Bond or in lieu of and in substitution for such Bond destroyed or lost, upon the registered owner paying the reasonable expenses and charges of the City in connection therewith and, in the case of a Bond destroyed or lost, filing with the Bond Registrar and Paying Agent by the registered owner evidence satisfactory to the Bond Registrar and Paying Agent that such Bond was destroyed or lost, and furnishing the Bond Registrar and Paying Agent with a sufficient indemnity bond pursuant to Section 47-8405, Arizona Revised Statutes, as amended.

Section 6. (a) The Bonds shall be executed on behalf of the City by the Mayor and attested by the Clerk of the City with their manual or facsimile signatures, and such officials are hereby authorized and directed to execute and attest the Bonds as aforesaid.

(b) The Management Services Director of the City is hereby authorized to execute and deliver the hereinabove described contract with the Bond Registrar and Paying Agent, the hereinafter described Undertaking and Bond Purchase Agreement.

Section 7. The Bonds shall be in substantially the following form, allowing those executing the Bonds to make the insertions and deletions necessary to conform the Bonds hereto:

## [Form of Bond]

UNLESS THIS BOND IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY ("DTC") TO THE CITY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY BOND ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.\*

REGISTERED  
NO. ....

REGISTERED  
\$.....

UNITED STATES OF AMERICA

STATE OF ARIZONA

COUNTY OF COCONINO

CITY OF FLAGSTAFF, ARIZONA  
GENERAL OBLIGATION BOND,  
SERIES 2013

Interest Rate:	Maturity Date:	Dated as of:	CUSIP:
.....% per annum	.....	....., 2013	338423 ....

REGISTERED OWNER: CEDE & CO.\*

PRINCIPAL AMOUNT: ..... DOLLARS

THE CITY OF FLAGSTAFF, ARIZONA, a body politic and corporate, duly created and existing under the laws of the State of Arizona (the "City"), for value received, hereby promises to pay to the Registered Owner indicated above, or registered assigns, the Principal Amount indicated above on the aforesaid Maturity Date, and to pay interest on the Principal Amount at the aforesaid Interest Rate on July 1, 2006, and on January 1 and July 1 of each year thereafter (each an "interest payment date") from the date of this Bond to its maturity or its redemption prior to maturity. The principal of and premium, if any, on this Bond are payable upon presentation and surrender hereof at the designated corporate trust office of ..... (the "Bond Registrar and Paying Agent"). Interest on this Bond is payable by check mailed to the registered owner hereof, as shown on the registration books for this series maintained by the Bond Registrar and Paying Agent at the address appearing therein at the close of business on the 15th day of the calendar month next preceding that interest payment date (the "regular record date"). Any interest which is not timely paid or duly provided for shall cease to be payable to the registered owner hereof (or of one or more predecessor Bonds) as of the regular record date, and shall be payable to the registered owner hereof (or of one or more predecessor Bonds) at the close of business on a special record date

\* Insert so long as The Depository Trust Company, New York, New York, is the Depository.

for the payment of that overdue interest. The special record date shall be fixed by the Bond Registrar and Paying Agent whenever moneys become available for payment of the overdue interest, and notice of the special record date shall be given to the registered owners of the Bonds not less than 10 days prior thereto. The principal of and premium, if any, and interest on this Bond are payable in lawful money of the United States of America, on the respective dates when principal and interest become due.

The bonds of this series (the "Bonds") represent the third installment of an aggregate voted amount of \$94,000,000 principal amount approved at a special bond election duly called and held in for the City of Flagstaff, Arizona (the "City"), on May 18, 2004; the second installment of an aggregate voted amount of \$21,220,000 principal amount approved at a special bond election duly called and held in for the City on November 2, 2010, and the first installment of an aggregate voted amount of \$24,000,000 principal amount approved at a special bond election duly called and held in for the City on November 6, 2012, for the purposes provided in Questions No.s 302 and 104 and 101, respectively, considered at such elections. This Bond is one of a series of such bonds, issued in the aggregate principal amount of \$.....,000, of like tenor except as to maturity date, rate of interest and number by virtue of an ordinance (the "Ordinance"), duly adopted prior to the issuance hereof, and pursuant to and in conformity with the Constitution and the laws of the State of Arizona, including particularly, Article 3 of Chapter 3 of Title 35 of the Arizona Revised Statutes, the Charter of the City and all other laws of the State of Arizona relating thereto.

For the punctual payment of this Bond, and the interest hereon, there shall be levied on all the taxable property in the City a continuing, direct, annual, *ad valorem* tax sufficient to pay all such principal and interest of and on this Bonds as the same become due, such taxes to be levied, assessed and collected at the same time and in the same manner as other taxes are levied, assessed and collected.

The Bonds maturing on July 1, ....., and July 1, ....., are not subject to redemption prior to maturity. The Bonds maturing on or after July 1, ....., are subject to optional redemption prior to maturity, in whole or in part, on July 1, ....., or any interest payment date thereafter, by the payment of a redemption price equal to the principal amount of each such Bond redeemed plus interest accrued to the date fixed for redemption plus a premium, the premium (calculated as a percentage of the principal amount of such Bonds to be redeemed) to be computed as follows:

<u>Redemption Dates</u>	<u>Premium</u>
July 1, ....., and January 1, ....	....%
July 1, ....., and thereafter	0.0

The Bonds maturing on July 1, ....., shall be redeemed prior to maturity on July 1, in the years and amounts set forth below, by

payment of the principal amount of each Bond to be redeemed plus interest accrued to the date fixed for redemption, but without a premium:

Year	Amount
	\$

A remaining principal amount of \$.....,000 of Bonds maturing on July 1, ....., shall mature on July 1, .....

Not more than seventy-five (75) nor less than sixty (60) days prior to the mandatory redemption date for the Bonds maturing on July 1, ....., the Bond Registrar and Paying Agent shall proceed to select for redemption (by lot in such manner as the Bond Registrar and Paying Agent may determine) from all the Bonds maturing on July 1, ....., outstanding a principal amount of the Bonds maturing on July 1, ....., equal to the aggregate principal amount of the Bonds maturing on July 1, ....., to be redeemed and shall redeem such Bonds maturing on July 1, ....., on the next July 1 and give notice of such redemption.

Not more than 45 nor less than 30 days before any redemption date, the Bond Registrar and Paying Agent shall cause a notice of any such redemption to be mailed by first class mail, postage prepaid, to the registered owner of each Bond to be redeemed at the address shown on the registration books maintained by the Bond Registrar and Paying Agent. Failure to mail notice to any registered owner of Bonds shall not affect the validity of the proceeding for the redemption of Bonds with respect to the registered owners of other Bonds.

The Bond Registrar and Paying Agent will maintain the books of the City for the registration of ownership of each Bond as provided in the Ordinance.

This Bond may be transferred on the registration books upon delivery hereof to the Bond Registrar and Paying Agent, accompanied by a written instrument of transfer in form and with guaranty of signature satisfactory to the Bond Registrar and Paying Agent, duly executed by the registered owner of this Bond or his or her attorney-in-fact or legal representative, containing written instructions as to the details of the transfer. No transfer of this Bond shall be effective until entered on the registration books.

In all cases upon the transfer of a Bond, the Bond Registrar and Paying Agent will enter the transfer of ownership in the registration books and will authenticate and deliver in the name of the transferee or transferees a new fully registered Bond or Bonds of

the denominations of \$5,000 of principal amount or any integral multiple thereof (except that no Bond shall be issued which relates to more than a single principal maturity) for the aggregate principal amount which the registered owner is entitled to receive at the earliest practicable time in accordance with the provisions of the Ordinance. All costs and expenses of initial registration and payment will be borne by the City, but the City or the Bond Registrar and Paying Agent will charge the registered owner of such Bond, for every such transfer of a Bond, an amount sufficient to reimburse them for any transfer fee, tax or other charge required to be paid with respect to such transfer, and may require that such transfer fee, tax or other charge be paid before any such new Bond shall be delivered.

The City and the Bond Registrar and Paying Agent will not be required (a) to issue or transfer any Bonds during a period beginning with the opening of business on the 15th business day next preceding either any interest payment date or any date of selection of Bonds to be redeemed and ending with the close of business on the interest payment date or day on which the applicable notice of redemption is given or (b) to transfer any Bonds which have been selected or called for redemption.

This Bond shall not be entitled to any security or benefit under the Ordinance or be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been signed by the Bond Registrar and Paying Agent.

It is hereby certified, recited and declared (i) that all conditions, acts and things required by the Constitution and laws of the State of Arizona to happen, to be done, to exist and to be performed precedent to and in the issuance of this Bond and of the series of which it is one, have happened, have been done, do exist and have been performed in regular and due form and time as required by law; (ii) that the obligation evidenced by the series of Bonds of which this is one, together with all other existing indebtedness of the City, does not exceed any applicable constitutional or statutory limitation; and (iii) that due provision has been made for the levy and collection of a direct, annual, *ad valorem* tax upon taxable property within the City over and above all other taxes authorized as limited by law, sufficient to pay the principal hereof and the interest hereon as each becomes due.

IN WITNESS WHEREOF, THE CITY OF FLAGSTAFF, ARIZONA, has caused this Bond to be executed in the name of the City by the facsimile signature of its Mayor and attested by the facsimile signature of its Clerk.

CITY OF FLAGSTAFF, ARIZONA

By ..... (Facsimile)  
Mayor

ATTEST:

..... (Facsimile)  
Clerk

CERTIFICATE OF AUTHENTICATION

This Bond is one of the Bonds described in the within-mentioned Ordinance and is one of the City of Flagstaff, Arizona General Obligation Bonds, Series 2013.

Date of Authentication: .....

.....,  
as Bond Registrar and Paying Agent

By.....  
Authorized Officer



## ASSIGNMENT

For value received, the undersigned sells, assigns and transfers unto ..... the within Bond and irrevocably constitutes and appoints ..... attorney to transfer this Bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated: ..... ..

Signature Guaranteed:

..... ..

Notice: The assignor's signature to this assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or any change whatsoever.

ALL FEES AND COSTS OF TRANSFER  
SHALL BE PAID BY THE TRANSFEROR

The following abbreviations, when used in the inscription on the face of the within Bond, shall be construed as though they were written out in full according to applicable laws or regulation.

TEN COM - as tenants in common  
TEN ENT - as tenants by the entireties  
JT TEN - as joint tenants with right  
of survivorship and not as  
tenants in common

UNIF TRANS MIN ACT - ..... Custodian .....  
(Cust) (Minor)  
under Uniform Transfers to Minors Act .....  
(State)

Additional abbreviations may also be used though not included in the above list.

Section 8. In each year while any of the Bonds shall be outstanding, there shall be and hereby is levied upon all taxable property within the City a continuing, direct, annual, *ad valorem* tax over and above all other taxes authorized or limited by law, which tax, together with other funds then on hand and available for such purposes, shall be sufficient to pay the principal of and interest on the Bonds as the same become due, and the officials of the City and Coconino County, Arizona, charged with the annual extension and collection of taxes, without further instructions from the Mayor and Council of the City, shall extend and collect the tax upon issuance of the Bonds. All moneys collected through such tax shall be paid into the treasury of the City, to the credit of an applicable, separate "Bond Fund" of the City for the Bonds, from which funds the Bonds shall be payable, which tax moneys shall be held in subfunds in each such fund to be known as the "Interest Fund" and the "Redemption Fund", which funds shall be kept separate and apart from and not commingled with any other funds or moneys and which shall be used solely for, respectively, payment of interest on and principal of the applicable series of the Bonds.

Section 9. The Management Services Director of the City is hereby authorized to accept a proposal of the Underwriter for the purchase of the Bonds, and the Bonds are hereby ordered sold to the Underwriter in accordance with the terms of the Bond Purchase Agreement presented to the Mayor and Council of the City at the meeting at which this Ordinance was adopted (the "Bond Purchase Agreement") and which is hereby approved. The Management Services Director of the City is hereby authorized to execute and deliver the Bond Purchase Agreement, for and on behalf of the City, in substantially the form submitted to the Mayor and Council of the City at the meeting at which this Ordinance was adopted and in a final form satisfactory to the Management Services Director of the City, and such execution and delivery by the Management Services Director of the City shall indicate the approval thereof on behalf of the City by the City. Upon the sale of the Bonds in accordance with the accepted proposal of the Underwriter and the provisions of this Ordinance and payment therefor, the Mayor, the Clerk or the Management Services Director of the City, or any of them, are hereby authorized and directed to deliver the Bonds to the Underwriter upon receipt of payment therefor.

Section 10. (a) The City shall not make or direct the making of any investment or other use of the proceeds of any Bonds which would cause such Bonds to be "arbitrage bonds" as that term is defined in section 148 (or any successor provision thereto) of the Internal Revenue Code of 1986, as amended, or "private activity bonds" as that term is defined in section 141 (or any successor provision thereto) of such Code, and the City shall comply with the requirements of such Code sections and related regulations throughout the term of the Bonds. (Particularly, the City shall be the owner of the facilities financed or refinanced with the proceeds of the sale of the Bonds (the "Facilities") for federal income tax purposes. Except as otherwise advised in a Bond Counsel's Opinion (as such term is defined in the next Section), the City shall not enter into (i) any management or service contract with any entity other than a governmental entity for

the operation of any portion of the Facilities unless the management or service contract complies with the requirements of Revenue Procedure 97-13 or such other authority as may control at the time, or (ii) any lease or other arrangement with any entity other than a governmental entity that gives such entity special legal entitlements with respect to any portion of the Facilities.) Also, the payment of principal and interest with respect to the Bonds shall not be guaranteed (in whole or in part) by the United States or any agency or instrumentality of the United States. The proceeds of the Bonds, or amounts treated as proceeds of the Bonds, shall not be invested (directly or indirectly) in federally insured deposits or accounts, except to the extent such proceeds (i) may be so invested for an initial temporary period until needed for the purpose for which the Bonds are being issued, (ii) may be so used in making investments of a bona fide debt service fund or (iii) may be invested in obligations issued by the United States Treasury. The Mayor and Council of the City hereby further covenant and agree to comply with the procedures and covenants contained in any arbitrage rebate provision or separate agreement executed in connection with the issuance of the Bonds (originally as provided in Section 11 hereof) for so long as compliance is necessary in order to maintain the exclusion from gross income for federal income tax purposes of interest on the Bonds. In consideration of the purchase and acceptance of the Bonds by such holders from time to time and of retaining such exclusion and as authorized by Title 35, Chapter 3, Article 7, Arizona Revised Statutes, as amended, the Mayor and Council of the City covenants, and the appropriate officials of the City are hereby directed, to take all action required or to refrain from taking any action prohibited by such Code which would adversely affect in any respect such exclusion.

(b) (i) The City shall take all necessary and desirable steps, as determined by the Mayor and Council, to comply with the requirements hereunder in order to ensure that interest on the Bonds is excluded from gross income for federal income tax purposes under such Code; provided, however, compliance with any such requirement shall not be required in the event the City receives a Bond Counsel's Opinion (as such term is hereinafter defined) that either (i) compliance with such requirement is not required to maintain the exclusion from gross income of interest on the Bonds, or (ii) compliance with some other requirement will meet the requirements of such Code. In the event the City receives such a Bond Counsel's Opinion, the parties agree to amend this Ordinance to conform to the requirements set forth in such opinion.

(ii) If for any reason any requirement hereunder is not complied with, the City shall take all necessary and desirable steps, as determined by the Mayor and Council, to correct such noncompliance within a reasonable period of time after such noncompliance is discovered or should have been discovered with the exercise of reasonable diligence and the City shall pay any required interest or penalty under Regulations section 1.148-3(h) with respect to such Code.

Section 11. (a) Terms not otherwise defined in Subsection (b) hereof shall have the meanings given to them in the arbitrage

certificate of the City delivered in connection with the issuance of the Bonds.

(b) The following terms shall have the following meanings:

Bond Counsel's Opinion shall mean an opinion signed by an attorney or firm of attorneys of nationally recognized standing in the field of law relating to municipal bonds selected by the City.

Bond Year shall mean each one-year period beginning on the day after the expiration of the preceding Bond Year. The first Bond Year shall begin on the date of issue of the Bonds and shall end on the date selected by the City, provided that the first Bond Year shall not exceed one calendar year. The last Bond Year shall end on the date of retirement of the last Bond.

Bond Yield is as indicated in such arbitrage certificate. Bond Yield shall be recomputed if required by Regulations section 1.148-4(b)(4) or 4(h)(3). Bond Yield shall mean the discount rate that produces a present value equal to the Issue Price of all unconditionally payable payments of principal, interest and fees for qualified guarantees within the meaning of Regulations section 1.148-4(f) and amounts reasonably expected to be paid as fees for qualified guarantees in connection with the Bonds as determined under Regulations section 1.148-4(b). The present value of all such payments shall be computed as of the date of issue of the Bonds and using semiannual compounding on the basis of a 360-day year.

Code shall mean the Internal Revenue Code of 1986, as amended, and any successor provisions thereto.

Gross Proceeds shall mean:

(i) any amounts actually or constructively received by the City from the sale of the Bonds but excluding amounts used to pay accrued interest on the Bonds within one year of the date of issuance of the Bonds;

(ii) transferred proceeds of the Bonds under Regulations section 1.148-9;

(iii) any amounts actually or constructively received from investing amounts described in (i), (ii) or this (iii); and

(iv) replacement proceeds of the Bonds within the meaning of Regulations section 1.148-1(c). Replacement proceeds include amounts reasonably expected to be used directly or indirectly to pay debt service on the Bonds, pledged amounts where there is reasonable assurance that such amounts will be available to pay principal or interest on the Bonds in the event the District encounters financial difficulties and other replacement proceeds within the meaning of Regulations section 1.148-1(c)(4). Whether an amount is Gross Proceeds

is determined without regard to whether the amount is held in any fund or account.

Investment Property shall mean any security, obligation (other than a tax-exempt bond within the meaning of Code section 148(b)(3)(A)), annuity contract or investment-type property within the meaning of Regulations section 1.148-1(b).

Issue Price is as indicated in such arbitrage certificate, which is the initial offering price to the public (not including bond houses and brokers, or similar persons or organizations acting in the capacity of underwriters of wholesalers) at which price a substantial amount of the Bonds was sold, less any bond insurance premium and reserve surety bond premium. Issue price shall be determined as provided in Regulations section 1.148-1(b).

Nonpurpose Investment shall mean any Investment Property acquired with Gross Proceeds, and which is not acquired to carry out the governmental purposes of the Bonds.

Payment shall mean any payment within the meaning of Regulations section 1.148-3(d)(1) with respect to a Nonpurpose Investment.

Rebate Requirement shall mean at any time the excess of the future value of all Receipts over the future value of all Payments. For purposes of calculating the Rebate Requirement the Bond Yield shall be used to determine the future value of Receipts and Payments in accordance with Regulations section 1.148-3(c). The Rebate Requirement is zero for any Nonpurpose Investment meeting the requirements of a rebate exception under section 148(f)(4) of the Code or Regulations section 1.148-7.

Receipt shall mean any receipt within the meaning of Regulations section 1.148-3(d)(2) with respect to a Nonpurpose Investment.

Regulations shall mean the sections 1.148-1 through 1.148-11 and section 1.150-1 of the regulations of the United States Department of the Treasury promulgated under the Code, including and any amendments thereto or successor regulations.

(c) Within 60 days after the end of each Bond Year, the City shall cause the Rebate Requirement to be calculated and shall pay to the United States of America:

(1) not later than 60 days after the end of the fifth Bond Year and every fifth Bond Year thereafter, an amount which, when added to the future value of all previous rebate payments with respect to the Bonds (determined as of such Computation Date), is equal to at least 90% of the sum of the Rebate Requirement (determined as of the last day of such Bond Year) plus the future value of all previous rebate payments with

respect to the Bonds (determined as of the last day of such Bond Year); and

(2) not later than 60 days after the retirement of the last Bond, an amount equal to 100% of the Rebate Requirement (determined as of the date of retirement of the last Bond).

Each payment required to be made under this Section shall be filed with the Internal Revenue Service Center, Ogden, Utah 84201, on or before the date such payment is due, and shall be accompanied by IRS Form 8038-T.

(d) No Nonpurpose Investment shall be acquired for an amount in excess of its fair market value. No Nonpurpose Investment shall be sold or otherwise disposed of for an amount less than its fair market value.

(e) For purposes of Subsection (d), whether a Nonpurpose Investment has been purchased or sold or disposed of for its fair market value shall be determined as follows:

(1) The fair market value of a Nonpurpose Investment generally shall be the price at which a willing buyer would purchase the Nonpurpose Investment from a willing seller in a bona fide arm's length transaction. Fair market value shall be determined on the date on which a contract to purchase or sell the Nonpurpose Investment becomes binding.

(2) Except as provided in Subsection (f) or (g), a Nonpurpose Investment that is not of a type traded on an established securities market, within the meaning of Code section 1273, is rebuttably presumed to be acquired or disposed of for a price that is not equal to its fair market value.

(3) If a United States Treasury obligation is acquired directly from or sold or disposed of directly to the United States Treasury, such acquisition or sale or disposition shall be treated as establishing the fair market value of the obligation.

(f) The purchase price of a certificate of deposit that has a fixed interest rate, a fixed payment schedule and a substantial penalty for early withdrawal is considered to be its fair market value if the yield on the certificate of deposit is not less than:

(1) the yield on reasonably comparable direct obligations of the United States; and

(2) the highest yield that is published or posted by the provider to be currently available from the

provider on reasonably comparable certificates of deposit offered to the public.

(g) A guaranteed investment contract shall be considered acquired and disposed of for an amount equal to its fair market value if:

(1) A bona fide solicitation in writing for a specified guaranteed investment contract, including all material terms, is timely forwarded to all potential providers. The solicitation must include a statement that the submission of a bid is a representation that the potential provider did not consult with any other potential provider about its bid, that the bid was determined without regard to any other formal or informal agreement that the potential provider has with the City or any other person (whether or not in connection with the Bonds), and that the bid is not being submitted solely as a courtesy to the City or any other person for purposes of satisfying the requirements in the Regulations that the District receive bids from at least one reasonably competitive provider and at least three providers that do not have a material financial interest in the Bonds.

(2) All potential providers have an equal opportunity to bid, with no potential provider having the opportunity to review other bids before providing a bid.

(3) At least three reasonably competitive providers (i.e. having an established industry reputation as a competitive provider of the type of investments being purchased) are solicited for bids. At least three bids must be received from providers that have no material financial interest in the Bonds (e.g., a lead underwriter within 15 days of the issue date of the Bonds or a financial advisor with respect to the investment) and at least one of such three bids must be from a reasonably competitive provider. If the District uses an agent to conduct the bidding, the agent may not bid.

(4) The highest-yielding guaranteed investment contract for which a qualifying bid is made (determined net of broker's fees) is purchased.

(5) The determination of the terms of the guaranteed investment contract takes into account as a significant factor the reasonably expected deposit and drawdown schedule for the amounts to be invested.

(6) The terms for the guaranteed investment contract are commercially reasonable (i.e. have a legitimate business purpose other than to increase the purchase price or reduce the yield of the guaranteed investment contract).

(7) The provider of the investment contract certifies the administrative costs (as defined in Regulations section 1.148-5(e)) that it pays (or expects to pay) to third parties in connection with the guaranteed investment contract.

(8) The City retains until three years after the last outstanding Bond is retired, (i) a copy of the guaranteed investment contract, (ii) a receipt or other record of the amount actually paid for the guaranteed investment contract, including any administrative costs paid by the City and a copy of the provider's certification described in (7) above, (iii) the name of the person and entity submitting each bid, the time and date of the bid, and the bid results and (iv) the bid solicitation form and, if the terms of the guaranteed investment contract deviates from the bid solicitation form or a submitted bid is modified, a brief statement explaining the deviation and stating the purpose of the deviation.

(h) The employment of such experts and consultants to make, as necessary, any calculations in respect of rebates to be made to the United States of America in accordance with Section 148(f) of the Code, is hereby authorized.

Section 12. (a) (1) The preparation, distribution and use of the Preliminary Official Statement relating to the Bonds in substantially the form presented to the Mayor and Council of the City before the meeting at which this Ordinance was adopted is in all respects hereby ratified, approved and confirmed, and the Management Services Director of the City is hereby authorized to deem the same "final" for purposes of applicable securities laws when finalized.

(2) The Underwriter is authorized to cause to be prepared, and the Management Services Director of the City is authorized and directed to approve, on behalf of the Mayor and Council of the City, and the Management Services Director of the City to execute, a final Official Statement in substantially the form of the Preliminary Official Statement, modified to reflect matters related to the sale of the Bonds, for distribution and use in connection with the offering and sale of the Bonds. The execution of such final Official Statement by the Mayor of the City shall be conclusively deemed to evidence the approval of the status, form and contents thereof by the Mayor and Council of the City.

(b) Subject to annual appropriation to cover the costs of preparing and mailing as necessary therefor, the City shall comply with and carry out all the provisions of a Continuing Disclosure Undertaking, to be dated the date of issuance of the Bonds (hereinafter referred to as the "Undertaking") with respect to the Bonds which the Management Services Director of the City is hereby authorized, for and on behalf of the City, to execute and deliver in substantially the form included in such final Official Statement, with



such additions, deletions and modifications as shall be approved by the Management Services Director of the City, and such execution and delivery shall constitute evidence of the approval of such officer of any departures from such form. Notwithstanding any other provision of this Ordinance, failure of the City (if obligated pursuant to the Undertaking) to comply with the Undertaking shall not be considered an event of default; however, any Beneficial Owner (as such term is hereinafter defined) may take such actions as may be necessary and appropriate, including seeking specific performance by court order, to cause the City to comply with its obligations under this Section. For purposes of this Section, "Beneficial Owner" means any person which (i) has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Bonds (including persons holding Bonds through nominees, depositories or other intermediaries), or (ii) is treated as the owner of any Bonds for federal income tax purposes.

Section 13. In consideration of the purchase and acceptance of any and all of the Bonds issued hereunder by those who shall be the registered owners of the same from time to time, this Ordinance shall be deemed to be and shall constitute a contract among the City and the registered owners of the Bonds.

Section 14. If any section, paragraph, subdivision, sentence, clause or phrase of this Ordinance is for any reason held to be illegal or unenforceable, such decision will not affect the validity of the remaining portions of this Ordinance. The Mayor and Council of the City hereby declare that it would have adopted this Ordinance and each and every other section, paragraph, subdivision, sentence, clause or phrase hereof and authorized the issuance of the Bonds pursuant hereto irrespective of the fact that any one or more sections, paragraphs, subdivisions, sentences, clauses or phrases of this Ordinance may be held illegal, invalid or unenforceable.

Section 15. All actions of the officers and agents of the City including the Mayor and Council of the City which conform to the purposes and intent of this Ordinance and which further the issuance and sale of the Bonds as contemplated by this Ordinance, whether heretofore or hereafter taken, are hereby ratified, confirmed and approved. The proper officers and agents of the City are hereby authorized and directed to do all such acts and things and to execute and deliver all such documents on behalf of the City as may be necessary to carry out the terms and intent of this Ordinance.

Section 16. All acts and conditions necessary to be performed by the City or to have been met precedent to and in the issuing of the Bonds in order to make them legal, valid and binding general obligations of the City will at the time of delivery of the Bonds have been performed and have been met, in regular and due form as required by law, and no statutory, charter or constitutional limitation of indebtedness or taxation will have been exceeded in the issuance of the Bonds.

Section 17. All formal actions of this Council concerning and relating to the passage of this Ordinance were taken in an open

meeting of this Council, and all deliberations of this Council and of any committees that resulted in those formal actions were in meetings open to the public, in compliance with all legal requirements.

PASSED, APPROVED AND ADOPTED by the Mayor and Council of the City of Flagstaff, Coconino County, Arizona, on this 19th day of February, 2013.

.....  
MAYOR

ATTEST:

.....  
CITY CLERK

APPROVED AS TO FORM:

.....  
CITY ATTORNEY

CERTIFICATION

I hereby certify that the foregoing Ordinance No. 2013-\_\_\_\_\_ was duly passed and adopted by the Mayor and the Council of the City of Flagstaff, Arizona, at a regular meeting held on the 19th day of February, 2013, and the vote was .... ayes and .... nays and that the Mayor and .... Councilmembers were present thereat.

.....  
Elizabeth Burke, Clerk, City of  
Flagstaff, Arizona

**CITY OF FLAGSTAFF**  
**STAFF SUMMARY REPORT**

**To:** The Honorable Mayor and Council  
**From:** Roger Eastman, Zoning Code Administrator  
**Date:** 01/30/2013  
**Meeting Date:** 02/05/2013



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**TITLE:**

**Consideration and Adoption of Ordinance No. 2013-01:** An ordinance amending Title 8, Public Ways and Property, Chapter 8-03, Streets and Public Ways, Section 8-03-001-0004, Removal of Snow and Ice.

**RECOMMENDED ACTION:**

- 1) Read Ordinance No. 2013-01 by title only for the final time
- 2) Adopt Ordinance No. 2013-01

**Policy Decision or Reason for Action:**

Amendments to City Code Section 8-03-001-0004, Removal of Snow and Ice, are proposed to enhance public safety, improve existing conditions by ensuring that sidewalks are maintained free from snow and ice in a safe, non-hazardous, and walkable condition following a snow storm. In addition, governmental efficiency will be improved, and there will be savings in staff time and overall City resources through more streamlined and efficient enforcement.

**Financial Impact:**

None.

**Connection to Council Goal:**

Effective governance

**Has There Been Previous Council Decision on This:**

In November 2008, amendments to this section were approved under Ord. No. 2008-31. Discussion was held at the January 15, 2013, Council Meeting at which time the proposed emergency clause was eliminated.

**Options and Alternatives:**

Please refer to Options and Alternatives provided on Page 3.

**Background/History:**

Section 8-03-001-0004, Removal of Snow and Ice, of the City Code provides requirements for the removal of snow and ice from City sidewalks by adjoining property owners to ensure public safety. The City's first snow clearing code was adopted in October 1915. Over the years it has been updated and improved, with the latest amendments approved in November 2008 when certain clarifying language was inserted into the section.

For the most part, as a result of extensive outreach by Code Compliance staff over the past few years, most property owners take responsibility for clearing snow and ice from sidewalks after a storm event. This is especially true in single-family residential areas where many property owners are responsive to the City's codes for clearing sidewalks. However, it is in the commercial and multi-family residential areas of the City, and where sidewalks abut vacant and undeveloped lots, where the greatest number of violations are found, and hence where the greatest risks to public safety occur.

In recent years, staff has identified a number of problems with the existing code that includes for example, property owners taking advantage of the two twenty-four hour windows imposed by the ordinance from the last snowfall and from the notice of snow removal to avoid their obligation to remove the snow and ice from abutting sidewalks, or they do so only at the end of the forty-eight hour limit. What this means is that property owners are not clearing sidewalks in a timely manner resulting in unsafe conditions on the sidewalk, and often pedestrians choose to walk in the street in vehicle travel lanes because it is perceived to be safer. Staff has documented adults of all ages as well as young children walking in travel lanes because it is deemed safer to do so than to risk falling on the ice and snow on the sidewalk (See photographs in Attachment A.). Another problem is that, as written, the existing code requires notice after each snow fall, requiring multiple notices to be sent to the same property owner during the winter months. This is obviously inefficient, cumbersome, and involves an unnecessary use of staff time and City resources. Finally, staff has noted that some commercial and multi-family residential property owners wait for City staff to tell them that sidewalks adjoining their property need to be cleared before doing so themselves, despite the City's regular notices requiring clearance. Also, some of these property owners frequently wait for the City to clear the sidewalk and to bill them for the services rendered as they find this more convenient than doing it themselves. For these reasons, staff has prepared amendments to Section 8-03-001-0004, Removal of Snow and Ice, as well as other minor amendments to clean-up the existing text.

The idea that property owners maintain public sidewalks free from snow and ice is common in the United States, and it has been upheld as law by the courts. Staff has conducted research into the snow and ice removal practices of 11 equivalent communities and used the ideas from the City of Boulder as the basis for the amendments to Section 8-03-001-0004, Removal of Snow and Ice of the City Code. It is noteworthy that some communities have much more restrictive standards than those in place and proposed for Flagstaff. Missoula, MT (population 57,000), for example, requires property owners to clear public sidewalks of snow, ice, slush, mud, and other impediments to foot travel by 9:00 a.m. the next day following the snowfall. Burlington, VT (population 39,000), requires property owners to clear public sidewalks within 4 hours of cessation of snowfall if cessation occurs in the daytime, or by noon of the following day if the snow ceases during the night. One of the reasons that cities and towns require property owners to clear adjoining public sidewalks of snow and ice is because it is prohibitively expensive for the municipalities to do it themselves. The City of Flagstaff has 318 miles of public sidewalk within the City limits, the maintenance of which by the Public Works Division instead of adjoining property owners, would involve the hiring of numerous part time employees and additional supervisory staff, the purchase of new equipment, and other unknown costs and challenges to the organization.

**Key Considerations:**

Approval of the proposed amendments to Section 8-03-001-0004, Removal of Snow and Ice, as provided in Ord. 2013-01, will enable the more efficient utilization of staff resources to ensure public safety by the maintenance of sidewalks free from snow and ice in a safe, non-hazardous, and walkable condition following a snow storm. Specifically, Subsections A. through D. are proposed to be amended to include a requirement for the clearing of crosswalk ramps as well as sidewalks, improved notification requirements with an annual notice provided to property owners per snow season, and clearer procedures for City abatement of unsafe sidewalks if needed.

**Expanded Financial Considerations:**

Not applicable.

**Community Benefits and Considerations:**

If this amendment to City Code Section 8-03-001-0004, Removal of Snow and Ice, is adopted it will improve public safety by ensuring that sidewalks are maintained free from snow and ice in a safe, non-hazardous, and walkable condition following a snow storm. In addition, governmental efficiency will be improved, and there will be savings in staff time and overall City resources through more streamlined and efficient enforcement.

**Community Involvement:**Inform

Flagstaff residents have been informed of this proposed change through one-on-one interactions with property owners when staff have had to discuss with them the need to clear their sidewalks in a timely manner. In addition, the issue has been mentioned on weekly radio programs, advertised on local media community bulletin boards, and posted to the City's web page as part of the January 15, 2013, agenda packet and the February 5, 2013 agenda packet.

**Expanded Options and Alternatives:**

Option 1. Adopt amendments to Section 8-03-001-0004, Removal of Snow and Ice, as provided in Ord. 2013-01.

Option 2. Adopt amendments to Section 8-03-001-0004, Removal of Snow and Ice, as provided in Ord. 2013-01, subject to any additional amendments agreed to by the City Council.

Option 3. Do not adopt Ord. 2013-01 and, therefore, leave Section 8-03-001-0004, Removal of Snow and Ice, as is without amendment.

**Council Action:**

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**Attachments:**     Ord. 2013-01  
                             Photos

## **ORDINANCE NO. 2013-01**

### **AN ORDINANCE AMENDING FLAGSTAFF CITY CODE TITLE 8, *PUBLIC WAYS AND PROPERTY*, CHAPTER 8-03, *STREETS AND PUBLIC WAYS*, SECTION 8-03-001-0004, *REMOVAL OF SNOW AND/OR ICE***

#### **RECITALS:**

WHEREAS, in the immediate aftermath of inclement winter weather, certain Flagstaff residents and businesses fail to remove snow and ice from the sidewalks and curb ramps/cuts abutting their premises, or fail to clear sidewalks of snow and ice in a manner that ensures that all pedestrians can safely traverse public sidewalks; and

WHEREAS, this failure to adequately remove snow and ice from the public sidewalks results in a lack of reasonable access and mobility for residents and visitors, and causes significant public safety issues; and

WHEREAS, the current version of the City's snow removal ordinance contains various provisions that frustrate the efficient and timely removal of snow and ice from public sidewalks, thereby hindering the flow of pedestrian traffic and, ultimately, endangering the health, safety and welfare of the citizens of the City of Flagstaff; and

WHEREAS, in order to provide more uniform and effective regulation of public sidewalks, the Mayor and City Council of the City of Flagstaff desire to amend Flagstaff City Code, Section 8-03-001-0004, Removal of Snow and/or Ice, in order to update the City's snow and ice removal requirements, and to add measures that protect pedestrians from the dangers associated with the accumulation of snow and ice on public sidewalks.

#### **ENACTMENTS:**

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:**

SECTION 1. That Section 8-03-001-0004, REMOVAL OF SNOW AND/OR ICE, is hereby amended as follows:

#### **SECTION 8-03-001-0004 REMOVAL OF SNOW AND/OR ICE:**

- A. Deposit on Public Thoroughfares: It shall be unlawful for any person within the corporate limits of the City to remove or cause to be removed any snow or ice from any private property within said City and place or deposit same upon a public street, avenue, alley or sidewalk within the City. For purposes of this section, "person" means any person, firm, partnership, association, organization, corporation, company or organization of any kind, public or private.
- B. Removal Required: ~~The owner, occupant, tenant or person~~ Any person having the care of who owns, leases or occupies any a building, or lot or parcel of land bordering on any public street, avenue, alley, square or other public place within the City shall at all times keep the sidewalks, curbs, and crosswalk ramps leading into crosswalks abutting upon or adjacent to the building, lot or lots parcel owned or occupied by them free and clear of

any accumulation of snow, ice, dirt or other obstruction. Any such owner or occupant person who fails to remove the snow, ice, dirt or other obstruction from the sidewalks as promptly as reasonably possible, but in any event no later than within twenty four (24) hours after the accumulation of snow and ice, shall be deemed guilty of a misdemeanor. Such persons are jointly and severally liable for such responsibility, both criminally and administratively. The removal of snow and or ice shall mean free of snow and or ice for the entire constructed width and length of the sidewalk, except those with a width exceeding five feet, which must be cleared to a width of at least five feet. The accumulation may be from any source, including snow plows, traffic, precipitation, or drifting. (Amended Ord. No. 2008-31, 11/04/2008)

- C. Noncompliance Comprehensive Planning and Code Administrator Authorized to Correct Hazardous Situation on Sidewalks: Should any owner or occupant of person owning, leasing or occupying any building, grounds or premises lot or parcel within the City fail, neglect or refuse to remove from the sidewalk, curbs and crosswalk ramps adjacent thereto, within twenty four (24) hours after written notice from the Public Works Director or designee all accumulations of snow, ice, or other obstruction from the entire constructed width and length of the sidewalk, as required by subsection (B.) of this section, including the tops of those curbs which indicate parking restrictions, and clear passage of sidewalk ADA ramps leading to crosswalks, then the Public Works Director Comprehensive Planning and Code Administrator (the "Code Administrator") or designee is authorized to remove such snow, ice or other obstruction at the expense of such owner or occupant. If the Code Administrator intends to charge any person responsible for keeping sidewalks, curbs, and ramps abutting the premises clear of snow or ice, then the Code Administrator will satisfy the requirements of this section. In the event of such removal, the Public Works Director or designee shall prepare a bill for the actual costs of removal of snow, ice, dirt or other obstruction, including the actual costs of any additional inspection and other incidental connected costs. The statement shall inform the owner or occupant that failure to pay the bill will result in a lien against the property. If the actual costs are not paid by the owner or occupant within ten (10) calendar days after receipt of the bill, the bill shall be collectible from the person or persons owning or occupying such building, grounds or premises. For purposes of this section, "Comprehensive Planning and Code Administrator" means the City of Flagstaff's Comprehensive Planning and Code Administrator, or his or her designee. (Amended Ord. No. 2008-31, 11/04/2008)

- D. If the Code Administrator finds that any portion of a sidewalk, curb or ramp has not been cleared of snow or ice as required by subsection (B.) of this section, and that a hazardous condition exists, the Code Administrator is authorized to charge the costs of clearing the snow or ice to the person responsible under this section.

1. The Code Administrator will notify the person who owns, leases or occupies any building, lot or parcel of land, that such person must remove the snow or ice within the earlier of twenty-four hours or 12:00 noon of the day following the notice.
2. Notice under this subsection is sufficient if hand delivered, emailed or telephoned to such person, or by posting on the premises. The Code Administrator shall provide at least one notice per annual snow season (November 1 to April 1) to persons responsible for keeping public sidewalks, curbs or ramps clear of snow or ice. After the first notice has been sent, the Code Administrator may cause the



public sidewalks, curbs and ramps to be cleared after the time period set forth in subsection 8-03-001-0004(B.).

3. The notice shall state that the snow or ice shall be removed and that, if it is not removed within the earlier of twenty-four hours or 12:00 noon of the day following the notice, the removal may be done at the behest of the City and all costs of the snow or ice removal may be imposed.

E. Charges for Snow or Ice Removal. If the person so notified fails to remove the snow or ice as required by the notice prescribed by subsection (D.) of this section, then the Code Administrator may cause the snow or ice removal to meet the requirements of this section and charge the costs thereof, the costs of inspection, plus an additional \$50.00 for administrative costs, to the person so notified and the owner, jointly and severally.

D.F. Hearing Procedure: An owner or occupant from whom a bill for snow or ice removal costs is collectible, as set forth above, may request an administrative hearing with regard to the bill under the procedures which follow.

1. Within ten (10) calendar days after receipt of the bill for the ~~actual~~ costs of removal of snow, ice, ~~dirt~~ or other obstruction from the City, as provide in Subsection D, above, the responsible party may request an administrative hearing regarding the written notice and the bill. The request for hearing must be in writing, state the objections to the notice and the bill, and be mailed or delivered to the Code Administrator ~~Director of Public Works~~.
2. Upon receipt of the hearing request, the Code Administrator ~~Director of Public Works~~ shall forward a copy of the request to the Municipal Court Administrator for assignment to a Municipal Court judge who shall preside as an administrative hearing officer. The Municipal Court Administrator shall promptly notify the parties of the hearing date for the matter. Neither the City nor the responsible party is required to be represented by counsel, but may be if they so choose. No pre-trial discovery shall be permitted absent extraordinary circumstances. Immediately before the hearing, both parties shall produce for inspection any exhibits and written or recorded statements of any witness which are to be offered at the hearing. Failure to produce exhibits or statements may result in the hearing officer denying admission of the evidence not produced. The hearing officer may call and examine witnesses, including the responsible party. All testimony shall be given under oath or affirmation. No person may be examined or cross-examined at a hearing except by the hearing officer, an attorney for a party, or the responsible party. The Arizona Rules of Evidence shall not apply in the hearing; any evidence offered may be admitted subject to a determination by the hearing officer that the offered evidence is relevant, material, and has some probative value to a fact at issue. If the party requesting the hearing fails to appear, the hearing officer may enter a finding for the City.
3. If the hearing officer determines, after hearing the parties and considering their evidence, that the City's notice to the responsible party was accurate, delivered to the proper party or parties, and that the bill for the actual cost of removal was supported by the City's evidence, then the hearing officer shall make a finding for the City on the bill. The responsible party may appeal the hearing officer's decision to the City Council at a regularly scheduled meeting by filing a written

request with the City Clerk for appeal within five (5) days after receipt of the hearing officer's decision. The request for appeal shall specify the grounds for reversal of the hearing officer's decision. The City Council may affirm, reverse, amend or remand the matter to the hearing officer if it finds that the hearing officer's decision is not supported by substantial evidence, is arbitrary and capricious, or is not in conformance with the law.

~~E.~~ G. If no hearing was requested on the notice or amount assessed for removal, or if an appeal was taken and the Council affirmed or modified the amount of the assessment, the assessment shall be recorded in the office of the Coconino County Recorder, including the date, amount of the assessment, and the legal description of the property against which the assessment is made. From the date of its recording, the assessment shall be a lien on the property and shall accrue interest at the rate prescribed by Arizona Revised Statutes, Section 44-1201. The City shall have the right to bring an action to enforce the lien in the Superior Court of Coconino County at any time after the recording of the assessment, but failure to enforce the lien by such action shall not affect its validity. The recorded assessment shall be prima facie evidence of the truth of all matters recited therein, and of the regularity of all proceedings prior to the recording of the assessment. A prior assessment for the purposes provided in this Section shall not be a bar to subsequent assessment or assessments for such purposes, and any number of liens on the same property may be enforced in the same action.

H. Both Prosecution and Correction of Condition Authorized. Proceeding under subsection 8-03-001-0004(C) through (G) shall not prevent or bar the City from prosecuting under 8-03-001-0004(B), nor shall prosecution under subsection 8-03-001-0004(B) prevent or bar the City from proceeding under subsection 8-03-001-0004(C) through (G).

SECTION 2. That the City Clerk be authorized to correct typographical and grammatical errors, as well as errors of wording and punctuation, as necessary; and that the City Clerk be authorized to make formatting changes needed for purposes of clarity and form, if required, to be consistent with Flagstaff City Code.

PASSED AND ADOPTED by the Mayor and City Council of the City of Flagstaff this 5<sup>th</sup> day of February, 2013.

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MAYOR

ATTEST:

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CITY CLERK

APPROVED AS TO FORM:

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CITY ATTORNEY

**ATTACHMENT A.: Photographs Showing Sidewalks Uncleared of Snow and Ice**







**CITY OF FLAGSTAFF**  
**STAFF SUMMARY REPORT**

**To:** The Honorable Mayor and Council  
**From:** Elizabeth A. Burke, City Clerk  
**Date:** 01/30/2013  
**Meeting Date:** 02/05/2013



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**TITLE:**

**Consideration and Adoption of Resolution No. 2013-01:** A resolution of the City Council of the City of Flagstaff, Coconino County, Arizona, repealing Resolution No. 2005-117, *Board and Commission Members' Handbook*, and adopting the *2013 Board and Commission Members' Handbook*.

**RECOMMENDED ACTION:**

- 1) Read Resolution No. 2013-01 by title only.
- 2) Adopt Resolution No. 2013-01.

**Policy Decision or Reason for Action:**

Adopting of this resolution will allow staff to move forward with periodic training of the City's Board and Commission members with a Handbook that includes current statutes, specifically with regard to the Open Meeting Law, and further clarification of practices.

**Financial Impact:**

None.

**Connection to Council Goal:**

11. Effective governance

**Has There Been Previous Council Decision on This:**

On November 15, 2005, the Flagstaff City Council adopted Resolution No. 2005-117, which adopted the Board and Commission Members' Handbook.

**Options and Alternatives:**

- A) Adoption Resolution No. 2013-01.
- B) Make further changes to the Handbook and adopt as amended.
- C) Not adopt Resolution No. 2013-01.

### Background/History:

On November 15, 2005, the Flagstaff City Council adopted Resolution No. 2005-117, the Board and Commission Members' Handbook. A copy of this Handbook is presented to new members when they are appointed, and is also referenced during the periodic Board/Commission Member Training held by the City Clerk's Office and Legal.

### Key Considerations:

Staff is requesting the proposed changes to this Handbook so that training may be scheduled and performed. Adoption of these changes would allow staff to reference current State Statutes and be clear on existing procedures. To summarize, these changes:

- Provide that minutes must now be taken for all boards/commission, regardless of whether they are advisory in nature.
- Eliminate reference to the Council liaisons to boards/commissions, since these no longer exist.
- Clarify that a board/commission expecting a larger than usual crowd to attend must attempt to provide ample room for the attendees.

### Community Benefits and Considerations:

The benefit of this resolution is that it allows the most current information to be provided to the City's board and commission members.

**Community Involvement:**

Inform  
Consult  
Involve  
Collaborate

The proposed changes were forwarded to Leadership as well as board/commission staff liaisons to help ensure that any other issues which boards and commissions were dealing with were also addressed.

**Council Action:**

**Attachments:** Res. No. 2013-01  
Handbook with changes

**RESOLUTION NO. 2013-01**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF,  
COCONINO COUNTY, ARIZONA, REPEALING RESOLUTION NO. 2005-117  
WHICH ADOPTED THE BOARD AND COMMISSION MEMBERS'  
HANDBOOK, AND ADOPTING THE *2013 BOARD AND COMMISSION  
MEMBERS' HANDBOOK***

**RECITALS:**

WHEREAS, the Flagstaff City Charter, Article 5, Section 1, authorizes the Flagstaff City Council to create boards or commissions and to grant them duties and powers consistent with the Charter; and

WHEREAS, a vital and healthy boards and commissions program is essential to the successful function of City government; and

WHEREAS, those who serve on Flagstaff's boards and commissions dedicate invaluable time and energy to the Flagstaff community and provide valuable advice to the City Council; and

WHEREAS, board and commission recommendations have a direct impact on the quality and level of services the City of Flagstaff offers its citizens; and

WHEREAS, on November 15, 2005, the Flagstaff City Council adopted Resolution No. 2005-117 adopting a Board and Commission Members' Handbook; and

WHEREAS, it has been determined that changes were needed to the Handbook to be consistent with current state law and practices.

**ENACTMENTS:**

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS  
FOLLOWS:**

SECTION 1. Resolution No. 2005-117, adopted on November 15, 2005, is hereby repealed.

SECTION 2: The *2013 Board and Commission Members' Handbook*, attached hereto, is hereby adopted.

PASSED AND ADOPTED by the City Council and approved by the Mayor of the City of Flagstaff this 5<sup>th</sup> day of February, 2013.

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MAYOR

ATTEST:

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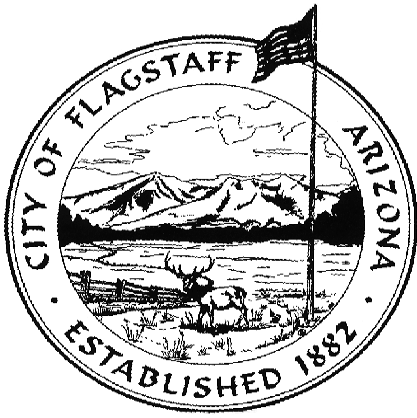
CITY CLERK

APPROVED AS TO FORM:

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CITY ATTORNEY





City Clerk's Office  
City of Flagstaff  
211 W. Aspen Ave.  
Flagstaff, AZ 86001  
(928) 213-2077

## CITY OF FLAGSTAFF

# Board and Commission Members' Handbook

■ ■ ■ ■ ■ ■ ■ ■ ■

***"Service to Community"***

# BOARD AND COMMISSION MEMBERS' HANDBOOK

## PREFACE

This Board and Commission Members' Handbook provides guidelines for City board\* or commission\* members. This information is designed to closely follow the rules and regulations that apply to the City Council and to ~~simulate~~ delineate their roles and responsibilities in order to create a uniform public process for the City of Flagstaff's public bodies. Most of the information contained in the manual will apply to your board and commission; however, your board or commission may have additional special provisions that are specific to its function. If you are unsure whether or not a specific rule applies to your board or commission, or, if you have further questions concerning any aspect of your duties and responsibilities, you should ask your staff liaison for clarification. ~~You may also~~ or contact the City Clerk's Office ~~or the Councilmember representative to your board or commission.~~

*\*For the purpose of this handbook, the terms "board" and/or "commission" include those boards, commissions, authorities, or committees which have been established by the City Council to perform functions in accordance with City and State law.*

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# INTRODUCTION

Welcome to the official City of Flagstaff family and the challenging and rewarding arena of public service! The Flagstaff City Council and staff thank you for your active participation in the governing process of our community.

The board and commission process is essential to the successful function of City government; and your contributions are invaluable. As a City board or commission member, your role is to help shape the future of the City of Flagstaff. You will be studying and recommending policy direction on a variety of issues vital to the City's future. This manual has been developed to help you meet the challenges you will face along the way.

It takes a substantial commitment of time and hard work to be a good commission member. Your decisions and recommendations can have a direct impact on the quality and level of services the City offers to its citizens, so it is important to keep in mind the needs of all citizens during the decision making process. You will read and study materials in advance of meetings. You will be required to listen to hours of discussion and testimony at public meetings. Often you will be asked to make difficult recommendations. You may even be asked to make recommendations that may have dramatic effects on your friends and neighbors. In your role as a board and commission member, you are asked to no longer consider solely your own perspective or that of your own peer group, but to consider the perspectives of all the communities who have a stake in any particular issue. Your role is to support the democratic process by considering the broadest set of perspectives on issues.

Your deliberations help the City Council to do its job. Sometimes Council decisions will directly incorporate your recommendations into their decisions, while other times your input will be one of many factors to be weighed by the Council prior to a final decision.

As a board and commission member, you are now a City official and you are bound by ethical standards, State laws, and City policies. You will work closely with City staff, policymakers, citizens, other government representatives, lobbyists, and ~~even~~ grass-roots organizations. This handbook is intended to guide you through these areas and assist you in your service as a board and commission member.

Your decisions will be reviewed and scrutinized by the public, the City Council, media, and other interested parties.

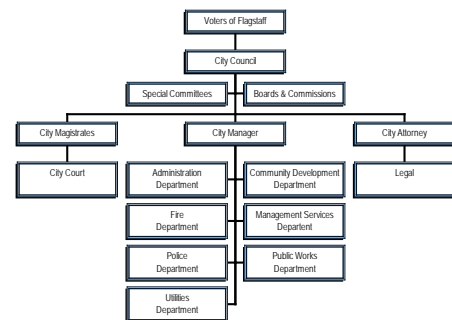
It is important to understand that your personal behavior, both inside and outside public meetings, will be observed and open to criticism by others. Ethics, good judgment, and dignity are the foundation of public service and the credo of City officials. By meeting these expectations, you will enhance our community's perception of city government.

Being a commission member is often challenging, but if you do it well, it will be an exciting and rewarding experience as you help shape the future of our community. We hope that this Board and Commission Handbook will help prepare you for serving as a member of the City of Flagstaff's boards and commissions program.

# FLAGSTAFF MUNICIPAL GOVERNMENT

## ORGANIZATION

The Flagstaff City Charter (included with this handbook) was adopted by the city voters in 1958 and is the basic governing authority of the City. The City Charter establishes a Council-Manager form of government. This means that the City Council provides leadership and formulates the laws and general policies of the City which are then administered by the City Manager. The Charter also outlines the duties and responsibilities of each area of City government.



## CITY COUNCIL

The City Council consists of a Mayor and six Councilmembers who are elected at large to serve as the legislative body of the City. The Mayor is elected every two years and acts as Chairperson of the Council presiding over Council meetings. Councilmembers hold staggered, four-year terms, with three seats decided every two years. Shortly after every City General Election, the Council chooses a Vice-Mayor to serve in the absence of the Mayor.

Consistent with applicable laws and regulations enacted by the Federal and State Governments, the City Council bears sole responsibility and exercises sole authority in establishing the policies governing the operation of the City of Flagstaff. The City Council enacts local legislation, adopts budgets, and establishes public policy. To do this, the Council sets goals and objectives based on strategic planning; recommendations from the City Manager, City Attorney, boards and commissions; public input; and through the budgeting process. Members of the City Council also serve as Council representatives to most of the city's boards, commissions, and committees.

## BOARDS AND COMMISSIONS

Article 5, Section 1, the Flagstaff City Charter authorizes the City Council to create boards or commissions and to grant to them duties and powers consistent with the Charter. Boards and commissions lie at the heart of citizen involvement in local government. The strength of the board and commission process is its ability to conduct detailed analysis and involve our community at the grassroots level. Board and commission members are appointed by and serve solely at the discretion of the City Council.

## CITY MANAGER

The City Manager is the City's administrative head and is directly responsible to the City Council. The City Charter grants the City Manager a non-voting seat on the Council. This allows the City Manager to take part in Council discussions. The City Manager implements Council policies and directives and makes recommendations to the Council on measures necessary for the efficient and effective operation of municipal services. It is the Manager's

responsibility to direct the preparation of the City's annual budget and submit it to the Council for approval. In addition, the City Manager oversees the day-to-day operation of the City and directs the activities of City employees.

### **CITY ATTORNEY**

The City Council also appoints the City Attorney. The City Attorney's Office serves as the legal branch of the City, representing the City's legal interests and rights, providing legal advice, and prosecuting criminal complaints. Among other things, the City Attorney's office drafts and reviews the City's legal documents and issues legal opinions.

### **CITY CLERK**

The City Clerk is appointed by the City Manager with the approval of the Council. The Clerk conducts City elections, ensures compliance with the Open Meeting Law, and maintains the official records of the City. The City Clerk administers the City's board and commission program and conducts board and commission member training, as well as maintaining membership rosters for the City's boards and commissions and processing board and commission applications. Be sure to provide any changes in your contact information as soon as possible to the Clerk's Office so that your record is accurate.

### **CITY ~~DEPARTMENTS~~ DIVISIONS**

The primary City ~~departments~~ divisions are: Administration, Community Development, Community Enrichment, Economic Vitality, Fire, Management Services, Police, Public Works, Utilities, the City Attorney's Office and Municipal Court. You will find that your board or commission works very closely with at least one city ~~department~~ division, if not more.

# **MEMBERSHIP ON CITY BOARDS AND COMMISSIONS**

## **GENERAL**

The strength of the boards and commissions lies in their ability to provide detailed review of specific issues and to increase public input and citizen participation in the determination of City policies and procedures. This process provides an opportunity for further public discussion and gives the City Council a broader base of information on which to formulate decisions. As a result, boards and commissions are an important governmental structure for generating broad public input and recommendations to the City Council.

Boards and commissions are established and may be dissolved by the City Council. With few exceptions specified herein, boards and commissions are advisory to the City Council. All actions taken by a board or commission are advisory to the City Council, except as specified by State law or City ordinance.

As an advisory body, a board or commission shall not take independent action to represent a position or opinion, whether or not related to its responsibility pursuant to City ordinance, except by submitting an advisory recommendation to the City Council or as otherwise specified by State law or City ordinance. A board or commission member may express a personal opinion outside his or her role as a board or commission member, but he or she shall not represent himself/herself as a board or commission member or use the title of board or commission member in doing so.

The boards and commissions with authority to take non-advisory action consistent with State law or City ordinance are: Board of Adjustment, Building and Fire Code Board of Appeals, Planning and Zoning Commission, and Traffic Commission. Board and commission members on these bodies need to be careful to act only within the authority assigned to them by City ordinance.

Most board and commission actions will be advisory and based on staff report, public input, and group discussion. Board and commission members shall take care to ensure the public's business is conducted openly and that public input is expressed in public meeting or in writing and recorded as part of the record of deliberation. It is not appropriate for citizens who are the principal parties in interest or who have a financial stake in a forthcoming agenda item to meet in private, undisclosed meetings with commissioners. These discussions should occur at public meetings. Commissioners may, however, engage in information gathering outside the public meeting framework.

Board and commission recommendations are presented to the City Council by report prepared by staff including minutes of meetings or by request as approved by the full commission. The City Council reviews and considers the board or commission recommendation before making decisions; however, the final decision rests with the City Council.



Boards and commissions are accountable to the City Council on issues delegated to them by the Council, and the City Council may direct the method and time of its accomplishment.

Board and commission recommendations are important to the City Council; they are given substantial weight. Your work is fundamental to the Council's decision making process. The City Council has several options and may:

- Approve the recommendation.
- Change the provisions of a recommendation.
- Send a matter back for further consideration.
- Not accept the recommendation.

Only the City Council, or a person acting pursuant to the direction of the City Council, may issue a communication (verbal or written) which represents an official position of the City. This includes, but is not limited to, statements of support of or opposition to an issue, resolutions on any matter, directives or requests of any kind to external agencies or entities; or anything that remotely purports to be of official city import. In addition, boards and commissions may not make recommendations for elective candidates, or take a position on an election issue. Upon the request of the City Council, a board or commission shall advise the City Council on a matter. A board or commission may also submit to the City Council recommendations on matters within the scope of its mission as established by the City Council.

The mission of your board or commission is found in its establishing legislation (ordinance or resolution). Your commission should focus on issues that fall squarely within the umbrella of activities created for you by the City Council.

## **ROLES AND RESPONSIBILITIES**

### **Appointed Board and Commission Members**

It is the City Council's policy that an individual may serve on only one board or commission at any given time, although there are some limited exceptions to this rule. Commissioners serve at the discretion of the City Council and, like any other Council-appointed position, may be removed from office by an official vote.

Most appointments to Flagstaff's boards, commissions, and committees are for three-year terms, unless an appointment is made for the balance of a member's term due to resignation, disqualification from office, or removal, or a different term length is set by state law. Under most circumstances, a board and commission member is eligible to serve two full terms. If the commissioner indicates his or her desire for reappointment at the expiration of the first term, the commissioner will be given consideration for reappointment.

In addition, the City's policy provides that board or commission members may continue to serve after term expiration until an appointment is made to replace them. Typically, however, appointments are made as soon as possible when a commissioner becomes ineligible for another term. If your term limit on a commission has expired, you are eligible to serve on any

other city board or commission. If you wish to serve again on your previous board or commission, you are eligible to do so after a year and after succeeding vacancies occur.

If eligible to serve a second term, a board or commission member may be considered for reappointment to a second term by notifying the staff liaison or City Clerk prior to the expiration of his/her term. Board and commission members seeking a second term are considered along with all other applicants for the vacant seat on the board or commission.

### **Council Representatives**

~~Most of the City's boards and commissions have a Councilmember, appointed by the City Council, who serves as either a voting or non-voting member depending on the structure of the board or commission.~~

### **Other Representatives**

A few boards and commissions have additional members who are not appointed by Council.

### **Cross Membership on Boards and Commissions**

In some cases, a voting member from one city board or commission will serve on another board or commission. A commissioner whose membership is derived from a parent commission may not serve in the capacity of an officer on the secondary commission. The primary purpose of this provision is to equalize spheres of influence and maintain a level playing field for commissions who have a joint interest in a matter.

### **Officers**

Most boards or commissions elect a Chairperson and Vice-Chair, usually on an annual basis. The Chairperson is the moderator of meetings and speaks on behalf of the commission when authorized by a majority of the members to do so. The chairperson may also review meeting agendas prior to their distribution and posting. The Vice-Chair serves in the absence of the Chairperson. Chairpersons and Vice-Chairpersons also have authority to call special meetings, as do a majority of the membership, when it is deemed necessary due to time constraints. Other than the above, officers have no additional duties than any other commission member.

### **Staff Liaison**

The City Manager assigns a City staff member to work with each board or commission. Your staff liaison wears many hats and one of those is to provide support for your commission. Among other things, the staff liaison's role is to:

- Prepare meeting agendas with input from the commission, write and present staff reports and support paperwork to the board or commission prior to meeting time.
- Ensure compliance with Open Meeting Law requirements.
- Assist a commissioner in distributing information to the body of the commission according to proper protocols.

- Respond to commissioner requests for information related to commission business.
- Prepare letters or other missives of the commission and process them for review and approval by the Mayor.
- Facilitate interaction with other boards and commissions.
- Place items on a commission meeting agenda, in response to direction from the City Council or City Manager, a citizen petition, a request from a commissioner or chairperson, a request for other boards and commissions, or as deemed necessary by the staff liaison.
- Coordinate requests for legal assistance with the City ~~Manager~~ Attorney.
- Prepare commission recommendations to the City Council and make presentations to the City Council on behalf of the Commission.

The staff liaison also has authority to call special meetings, when necessary, to meet program directives for the board or commission.

Commissioners do not have authority over the work program of city staff. Rather, the liaison acts as an information resource and provides technical assistance. Board and commission members may not direct city staff in the performance of their commission-related activities, nor can they assign projects or direct the work of staff. A board or commission may request staff's assistance on various projects; however, the City Manager must approve all requests which create a substantial demand for a work product.

### **Subcommittees**

Boards and Commissions may appoint subcommittees or advisory committees to work on various matters. Subcommittee or advisory committees cannot contain a quorum or more of parent commissioners. If a quorum or more of the parent commissioners attend a subcommittee or advisory committee meeting, it becomes a full-blown commission meeting and ~~minutes must be taken~~ an appropriate agenda and minutes would be required. If the subcommittee or advisory committee is not limited to commission-only membership, the remaining members must be appointed by the City Council. Subcommittees and advisory committees are bound by the Arizona Open Meeting Law requirements which means that agendas must duly be prepared and posted and minutes must be prepared. ~~; however, it is not necessary to prepare minutes of meetings.~~ The sole purpose of subcommittees and advisory committees is to make recommendations to the main commission and they have no authority of their own.

### **Residency**

The City Charter requires all board and commission members to be residents of the City of Flagstaff at the time of their appointment and for the full duration of their term in office. This means that your primary physical residence must be located within city limits and that you reside at that location. A board or commission member who moves out of town during a term of office is no longer eligible to serve on the board or commission. The only exception to this rule is the joint City/County Library Board where the County appoints two individuals who are County residents but who may or may not be residents of the City.

## Meeting Attendance

The success of your board or commission depends on your active participation. A commission meeting cannot proceed without a quorum of members in attendance. ~~Unless otherwise specified,~~ **Often** a quorum is one more than half of the full voting membership of a board or commission; **however, some commissions have a different quorum requirement based upon the statutory or other language that defines the commission. Please check with your staff liaison to determine the number of commissioners that constitutes a quorum for your particular board or commission.** Some establishing ordinances contain attendance requirements, while other commissions have adopted bylaws to clearly define attendance requirements. However, as a general rule, a board or commission may recommend to the City Council the dismissal of any citizen member who is absent for more than two consecutive regular meetings without prior notification. This same rule applies if a commission member is absent for more than thirty percent (30%) of all meetings during a twelve-month period.

## Orientation

As a board and commission member, you are required to attend at least one session of the City's semi-annual board and commission training during your first term in office. The City Clerk's office will notify you as these sessions are scheduled.

The City Clerk's Office will also provide, upon request, specific training sessions to boards and commissions to supplement formal orientations.

## Qualifications

Occasionally a commission's organizational structure will require a member to have a specific qualification or background. For example, the Tourism Commission must have a specified number of members from the tourism industry; the members of the Audit Committee are usually Certified Public Accountants or have a strong accounting background, and the Youth Commission is comprised of middle and high school level students.

## Membership Roster

The City Clerk maintains current membership rosters for all the City's official boards and commissions. If your home or work address or phone number changes, be sure to notify the Clerk's office as quickly as possible.

# **LAWS, REGULATIONS, AND POLICIES**

## **GENERAL INFORMATION**

This portion of the handbook is devoted to helping you navigate the difficult waters that come with being a public official. Public agencies and public officials are bound by stricter standards than the private sector. Preparation for meetings, meeting decisions, discussion items, agendas, and commissioner conduct are all strictly regulated by state law. These statutes require compliance and they affect all government agencies. Non-compliance or willful disregard of these laws can result in painful consequences.

The two most important laws that you will face as a commissioner are Arizona's Open Meeting Law (Arizona Revised Statutes Title 38, Chapter 3, Article 3.1) and the Conflict of Interest Law (Arizona Revised Statutes, Title 38, Chapter 3, Article 8). Protecting the public and safeguarding the public process is at the core of these laws. Because they have a direct bearing on your board or commission's activities and your behavior as a commissioner, it is vitally important for you to become familiar with them.

With few exceptions, all boards and commissions meet on a regular basis. If a quorum is not in attendance, by definition, a meeting cannot be conducted. It is important that all, or a majority of, commissioners receive information and engage in discussion at the same time. This ensures a level playing field for commissioner members and the members of the public interested in the issue. In cases where a quorum is present at the beginning of the meeting but is lost due to attrition during the meeting, the meeting shall be concluded at the time of the departure of the commissioner whose absence results in the lack of a quorum.

## **OPEN MEETING LAW (A.R.S § 38-431-.09)**

Arizona's Open Meeting Law states that:

*"...It is the public policy of this state that meetings of public bodies be conducted openly and that notices and agendas be provided for such meetings which contain such information as is reasonably necessary to inform the public of the matters to be discussed or decided...."*

In other words, meetings shall be open to the public and all legal action, as well as the proposing and discussing of all such action, must take place during the public meeting. Further, only items on the agenda may be discussed. Regular or special meetings, work or study sessions, or other gatherings at which a quorum of the public body is present to discuss or decide the public body's business, must comply with the notice, agenda, and minute requirements and must be open to the public.

Boards and commissions must designate, in writing to the City Clerk, the place where meeting notices will be posted. Notices must state when and where the meeting will be held and list the items of business to be discussed. In most cases, a copy of the agenda can serve as the meeting notice so long as it contains all of the elements required in this section. These notices are prepared by your staff liaison and kept on file in the Clerk's Office for public inspection.

A minimum of 24-hour public notice to board and commission members and the general public is required for all public meetings unless an actual emergency exists. In addition to notice of the time, date, and place of each meeting, the Open Meeting Law requires a prepared agenda. Notices and agendas must contain enough information to inform the public of the matters to be discussed or decided. This does not permit the use of agenda items such as "new business" or "old business," unless the specific items of new and old business are listed. Once again, your staff liaison will make sure that your agendas are prepared and posted in accordance with the law as a matter of course.

**All persons desiring to attend and listen to meetings must be accommodated. This may result in the need to move a meeting to a larger facility when an issue causes a large amount of public concern and many citizens wish to attend a meeting. Your staff liaison should be advised if you suspect that different accommodations will be required for a meeting because of larger than normal public interest.**

Actions taken at a meeting held in violation of the Open Meeting Law are null and void unless ratified within 30 days of discovery **and** notice and a detailed description is given at least 72 hours prior to the meeting to ratify the non-complying action(s).

The Open Meeting Law requires minutes for all meetings ~~except those of subcommittees and advisory committees~~. At a minimum, minutes must contain the date, time, and location of the meeting; a list of governing board members in attendance and those members who are not in attendance; a description of the topic(s) under discussion and/or consideration; the name of each person "making statements or presenting material to the public body;" all first and second motions, along with the person's name who made the motion; and a numerical breakdown of the vote. Either written minutes or an audio recording of a public meeting must be available for the public within three working days after the meeting, **and must be posted on the City's website within this same period of time**. Written minutes that have not yet been approved should be marked "draft" before being made available for public inspection. **Additionally,**

~~Unless written minutes are specifically required by State law, the City Code, or the City Charter, audio recordings are acceptable with prior Council approval.~~

Practices such as polling individual members to reach a decision prior to the meeting are prohibited. If the public body or its presiding officer appoints a committee or subcommittee to study a particular issue, the law also governs the meetings of the committee or subcommittee. This is true regardless of the composition of the committee or subcommittee.

Whether oral, written or e-mail, discussion and deliberation between less than a quorum of members for the purposes of circumventing the Open Meeting Law is a violation of the law. The City of Flagstaff ~~takes the position~~ **recommends** that two or more commissioners may not engage in discussion for the purpose of influencing the outcome of a decision of a board or commission. The effect of one vote curried in a private setting may alter the course of a commission's ultimate decision and this violates the spirit of the Open Meeting Law. Observance of this **policy recommendation** will remove commissioners from dangerous environs and protect them from censure.

To avoid pitfalls associated with Arizona's Open Meeting Law, information and materials that a commissioner wishes to share with members of his/her commission should be provided to the staff liaison for distribution to the commission at open meeting or should be distributed by the commissioner at an open meeting with sufficient copies for those in attendance. Discussion is to be limited to public sessions in keeping with the spirit of the Open Meeting Law. This means that the public's business is to be conducted in public.

A board or commission agenda may include a "Call to the Public" to designate a part of the meeting for the public to address the board or commission on items that are not on the prepared agenda. Following an open call to the public, members of a public body may respond to criticism raised, ask staff to review a matter raised or ask that a matter raised be put on a future agenda. However, neither discussion nor action may occur on issues that are not on the agenda.

On a rare occasion, a board or commission may convene for an executive session. Executive sessions shall not be held without the prior consent of the City Attorney. Executive sessions must meet the minimum 24-hour posting requirement and agendas, again, must inform the public of the matters under consideration. Bodies are allowed to convene in executive session only under seven auspices. The most likely topic of an executive session involving a board or commission would be to consult with the City's attorneys ~~or to discuss a sensitive matter involving another commissioner~~. Occasionally, the City Council will request a joint executive session with a board or commission. Executive sessions are not open to the public and no formal action is taken. In addition, the particulars of executive sessions matters are confidential and may not be discussed with anyone.

Arizona's Open Meeting Law includes penalty provisions for violations. Anyone affected by an "illegal action" can file suit in Superior Court. If the Court finds that the Open Meeting Law has been violated, it may levy a fine of up to \$500 against the commissioner(s) for each violation. The commissioner as an individual, and not the municipality, must pay the fine. The commission member is also subject to removal from office.

The Arizona Attorney General has published an "Agency Handbook" on its website. Chapter 7 is devoted to public agency duties and responsibilities under the Open Meeting Law. If you would like to view this information, you can visit the Attorney General's website at: [http://www.azag.gov/Agency\\_Handbook/Ch7.pdf](http://www.azag.gov/Agency_Handbook/Ch7.pdf). This document is fully linked for your convenience **and is also available on the City's website under City Hall/Agendas & Minutes/City Council/Meetings.**

If violations of the Open Meeting Law continue to occur after admonishments to a commission, any of its members, or the staff liaison in conjunction with the commission or its members, a formal complaint **will may** be filed with the Arizona Attorney General's office to seek compliance in order to protect the best interests of the community and the City of Flagstaff.

## **E-MAIL AND OTHER COMMUNICATIONS AMONG COMMISSIONERS OUTSIDE A PUBLIC MEETING**

Communications can occur among commission members in a variety of ways in other than a public setting: face-to-face, in writing, over the telephone and through the use of e-mail. The

Attorney General's Office is enforcing the Open Meeting Law to prohibit the use of e-mail between a quorum of the members of a public body where public matters are discussed, considering such e-mail discussion to be a "meeting" held in violation of the Open Meeting Law.

E-mail (or electronic) communications can constitute a "meeting". The public does not have access to commissioners' e-mail, so when members of a public body begin having discussions by electronic or telephonic communication, it can result in Open Meeting Law violations. In addition, the staff liaison or other staff member is not allowed to communicate the various positions of commissioners to each other. Once a commissioner commits to written form a communication related to commission business, that record no longer belongs to the commissioner as an individual, but becomes part of the public domain. Anyone involved in sending messages back and forth which even discuss possible action or propose a formal action are breaking the law—the same as if the commissioners had met together in a private meeting.

Finally, anything you commit to in writing pertaining to commission business is a public record and must be produced in response to a public information request.

It is important to emphasize the City's policy that communications among commissioners outside of the public meeting setting should first be forwarded to the staff liaison who will distribute the information according to proper protocols.

## **CONFLICT OF INTEREST LAW (ARS §38-503)**

Conflict of interest laws are written to protect the public's interests, primarily, but they also provide protections for the public agency and for you.

It is a felony if you knowingly or intentionally violate the Conflict of Interest Law. A negligent or reckless violation is a misdemeanor. You can also be prosecuted for failing to disclose a conflict that you did not know about but should have. You have to be alert to this possibility and make all reasonable efforts to identify potential conflicts.

The Conflict of Interest Law applies to all public officers, including board and commission members, and employees of incorporated cities and towns. It can also apply to relatives of public officers and employees. Generally, all City employees and elected and appointed officials must be constantly on guard against conflicts of interest. Because there are severe penalties for violating the Conflict of Interest Law, you should understand your obligations, liabilities, and rights.

The Conflict of Interest Law distinguishes between interests that are "remote" and those that are "substantial". Remote interests are considered so minor that they do not constitute legitimate conflicts of interest. Any pecuniary or proprietary interest that is not remote is a "substantial" interest and does constitute a conflict of interest.



## **Remote Interest**

If you have a remote interest in a matter, then you can still vote and participate in the discussion of your board or commission. For a public officer or employee, or a relative of a public officer or employee, a remote interest is:

1. A non-salaried officer of a non-profit corporation doing business with or requesting money from the City.
2. The landlord or tenant of a contracting party. (For example, an advisory board member may lease office space to a party with a private interest in a public matter without it resulting in a conflict of interest.)
3. An attorney whose client is a contracting party.
4. A member of a non-profit cooperative marketing association doing business with the City.
5. The owner of less than three percent of the shares of a corporation doing business with the City, provided that:
  - a. the total annual income from dividends, including the value of stock dividends, does not exceed five percent of the officer's or employee's total annual income; and
  - b. any other payments made to the officer or employee by the corporation do not exceed five percent of the officer's or employee's total annual income.
6. Being reimbursed for actual and necessary expenses incurred in performance of official duties.
7. Receiving municipal services on the same terms and conditions as if you were not an officer or employee of the municipality. (For example, when a Councilmember who owns a business within the City votes for or against an increase in the business license tax, a conflict would not exist because this action would apply to all businesses in the corporate limits.)
8. An officer or employee of another political subdivision, a public agency or another political subdivision, or any other public agency voting on a contract or decision which would not confer a direct economic benefit or detriment upon the officer. Thus, a Councilmember who is a schoolteacher may vote to enter into an intergovernmental agreement with the school district, unless such agreement would confer some direct economic benefit, such as a salary increase, upon the Councilmember.
9. A member of a trade, business, occupation, profession, or class of persons who has no greater interest than the other members of similar trades, businesses, occupations, professions, or classes of persons. (For example, a plumber who serves on the City Council may vote to increase or decrease plumbing inspection fees since the effect of this decision will be equal on all plumbers within the City.)

## **Substantial Interest**

When a substantial conflict of interest exists, you must remove yourself from the commission discussion and decision on the item. A substantial conflict generally involves a monetary (salaried) or ownership relationship with a private entity doing business with the city. This kind of conflict of interest requires you to identify a conflict of interest publicly on the record and to refrain from discussion, vote, or any attempt to influence the decision.

If you are the chairperson and you declare a conflict of interest, you must hand the conduct of the meeting over to your vice-chair and leave the podium. It is inappropriate for the Chairperson to preside over a matter when the chair has declared a conflict of interest.

A substantial conflict of interest is defined as any pecuniary (monetary) or proprietary (ownership) interest that is not remote. In general, a conflict of interest exists when an officer or employee of the City is involved in substantial ownership or salaried employment with a private corporation doing business with the City. For example, if a Councilmember owns or is employed by a lumberyard selling to the City, a conflict may exist. On the other hand, if the Councilmember is the lawyer of the lumberyard, or if the Councilmember leased land to the lumberyard, a conflict may not exist.

A public officer or an employee may sell equipment, material, supplies, or services to the municipality in which the officer or employee serves if this is done through an award or contract let after public competitive bidding. However, the City officer or employee would not be able to influence the bidding process in any way and must make known such interest in the official records of the City.

The Conflict of Interest Law also contains the following restrictions on the activities of public officers:

- When a public officer has exercised "administrative discretion" in an issue, that officer or employee cannot receive compensation if representing another person before an agency of the City on the same issue. This restriction extends to twelve months after termination of office or employment with the city or town.
- A public officer cannot use confidential information obtained during the term of office or employment for personal gain.
- A public officer cannot receive any compensation for performance of services in any case, special proceeding, application, or other matter pending before any agency of the City. This does not apply, however, to ministerial functions such as filing or amending tax forms, applying for permits, licenses, or other documents.
- A public officer cannot use his or her position to obtain anything of value that would normally not be received in the performance of official duties. Something is considered of "value" when it exerts a "substantial and improper" influence on the duties of the public official.

A conflict of interest also occurs when a public officer or employee has the opportunity to perform some act or participate in making a decision in an official capacity that might affect an economic interest of either themselves or their relatives.

To help you decide if you have a conflict, ask yourself three questions:

- Will my decision have a positive or negative impact on an interest of my relative's or mine?
- Do I have a monetary or ownership interest in the matter?
- Is my interest other than one of the designated remote interests?

If you find that you have a substantial conflict of interest, you must:

1. Refrain from voting or in any way influencing the decision.
2. Make the conflict of interest known in the official records of the City by declaring at the board or commission meeting that a conflict of interest exists so that the declaration can be officially entered into the minutes.
3. Leave the table or the room until the item is discussed and acted upon.
4. File a conflict of interest disclosure statement with the City Clerk's office that describes the nature of the conflict.

### **Public Perception and the Appearance of a Conflict of Interest**

On occasion, a member of the public, or even a fellow commission member may believe that you have a conflict of interest, when you do not. These are some additional filters to help you determine if you do, indeed, have a conflict of interest:

1. Is there **sufficient appearance of a connection** between you and the subject matter that your continued participation in the issue **would harm your ongoing credibility, that of your board or commission and/or the ongoing credibility of the City?**
2. Is the accusation reasonably grounded or is it a flight of fancy?
3. Does the accuser stand to gain something by your withdrawal from the discussion?

Public perception is not a sufficient basis alone upon which to determine whether or not a conflict of interest occurs. Citizens, by and large, are not familiar with conflict of interest laws. Citizens have also been known to try to use a "conflict of interest" argument to keep a public official from voting on a matter when that citizen did not agree with the public official's position or vote.

If you have an appearance of a conflict of interest, or you are not sure whether or not you have a conflict, you may request a finding. The appropriate protocol is to address the matter with your staff liaison, in writing or verbally, who will then forward it to the City Manager for disposition.

### **Prohibited Acts Within a Year After Leaving Public Office**

It is possible to violate the Conflict of Interest Law even after leaving public office. Within a year after leaving office, former public officials may not:

- Receive or accept compensation when representing any private person or entity before the city on an issue that was discussed during the term of office.
- Use confidential information obtained during the term of office for personal gain.
- Receive any compensation in any special matter pending before any agency of the City (with the exception of administrative actions such as filing routine forms, routine applications for permits, licenses, etc.)

### **Misusing a Declaration of Conflict of Interest**

The conflict of interest argument can be misused, as well. It should never be raised as a way to escape accountability for a vote, to avoid taking a stand on a controversial issue, or to

appease an unfounded public perception. You are appointed to do much of the homework for the City Council and to make informed and unbiased recommendations to the City Council. It is important that you fulfill this obligation. It cannot be emphasized enough that the success of your board or commission depends on your active participation. Regular and frequent "conflicting out" of your board or commission's business may limit your effectiveness as a commissioner.

# CODE OF CONDUCT

Your conduct as a board or commission member is very important. It can strengthen or undermine the credibility of your board or commission and the decisions or recommendations that it makes. A commission member's statements and actions assume special significance and, if not responsibly discharged, could be detrimental to the City's best interests. In addition, improprieties of a board or commission member can have a legal impact on the City.

For these reasons, all board and commission members are required to attend an orientation workshop as a condition of appointment. In addition, each board and commission member is asked to observe the following guidelines.

As an official member of the City of Flagstaff team, City policies apply to board and commission members.

A public process has been established for commission recommendations and decisions to be presented to the City Council in public meetings. Individual commission members should not meet jointly or separately with members of the City Council on matters of commission business. However, this provision is not meant to deprive the commissioner, as a citizen, of the right to meet with any member of the City Council on any other matter. Private meetings with City Councilmembers can be interpreted as attempting to influence the outcome of a vote of the City Council prior to a matter coming to the Council at an open meeting. Not only is it illegal for commissioners to discuss commission business with each other behind the scenes, but discussing commission business behind the scenes with City Councilmembers could also lead City Councilmembers into violations of the Open Meeting Law if the item is forthcoming on a Council meeting agenda, particularly if a commissioner conveys information from one Councilmember to another, as the Open Meeting Law prohibits Councilmembers and commissioners from communicating through an intermediary.

As a member of a board or commission, you do not lose your rights as a private citizen. However, you may not use your official title or make any statement as a representative or member of your commission to influence an election, further a personal position, or for personal benefit. Under City policy, you are not allowed to make unauthorized statements as a representative of your commission. Your title belongs to the City and is to be used when you are engaged in official business of the City such as at public meetings.

The City of Flagstaff has adopted a mission and values statement that pertains to all of its municipal officers, officials, and employees. It states that:

"The mission of the City of Flagstaff is to **protect and** enhance the quality of life of its citizens ~~while protecting the values of our community.~~"

Some of the values needed to achieve this goal are:

- Accountability
- Honesty
- Responsibility
- Cost consciousness

- Teamwork in partnership with citizens
- Problem solving.

As a public official of the City of Flagstaff, these ideals apply to you.

Along the way, commissioners may find themselves facing ethical dilemmas. Matters of ethics are often difficult to detect. It is important that you make every possible step to preserve the public perception of your ethics and values. What you do in any given situation is a reflection upon the organization as a whole. The values you hold will greatly influence your behavior when you are confronted with an ethical question.

People are quick to judge by appearance. During meetings and at official public functions, your words and actions will come under intense public scrutiny. Your public behavior is a statement about the democratic process in the City of Flagstaff. It is also a reflection on the way the City of Flagstaff conducts its business. Consequently, you should consider ethical questions through the “filter” of public perception.

If you have a question on an ethical issue, contact your staff liaison before the meeting and take no position on the issue until you have resolved the dilemma. It is very important to act in an appropriate manner at all times.

Gift giving is one of the most common ethical situations that come into play with public officials. Some gifts are harmless and have no hidden meaning while others are subtly, or even overtly, meant to influence your behavior and vote. If a citizen or some other entity tenders you a gift, it may be helpful to ask the following questions in whether or not you should accept the gift:

1. Is the giver associated with an individual or organization involved with a past, present, or future matter that has been considered or will be considered by your board or commission?
2. Does the giver expect something in return?
3. Is the gift of more than nominal value?
4. Would someone question your integrity and values if they knew about the gift?

If your answer is “yes” to even one of these questions, then you should not accept the item regardless of whether or not it is innocent in intent.

Create a good impression of city government. Your conduct and performance is a picture in the eyes of the public of the way the city is run. It should be as pleasant and comforting a picture as possible.

- Be knowledgeable about the process and procedures of municipal government and the specific responsibilities associated with being a member of your board or commission.
- Avoid making recommendations or expressing views that have not been approved by a majority of the members of the board or commission you represent without clearly indicating that you are speaking as a private citizen.

- Public statements should contain no promises to the public that may be construed to be binding on the board or commission, staff, or City Council.
- When making a public statement, stress that the commission actions are recommendations and that final action will be taken by the City Council. Or, in the case of the few boards and commissions with decision-making authority, are subject to appeal to the City Council.
- Attend the meetings of your board or commission. Be sure to arrive promptly and stay until all business has been concluded.
- Conduct official business in a fair, objective, and professional manner.
- Be respectful of others.
- Listen to what others have to say, including those with whom you disagree.
- Place the public welfare ahead of your own.
- Conduct the public's business in public.
- Make recommendations and/or decisions in the best, long-term interest of Flagstaff citizens as a whole.
- Be informed about issues having a direct relation to the board or commission you represent.
- Maintain a good relationship with the public, City Council, City staff, and other commission members.
- City of Flagstaff elections are non-partisan. Do not use your appointed office or title to conduct political activities.
- Act lawfully, as well as within the spirit of the law, including those laws that apply directly to your role as a board or commission member.

# MEETINGS

## AGENDAS

As discussed in the section on Arizona's Open Meeting Law, boards and commissions are required to prepare and post agendas for their meetings. Boards and commissions may establish deadlines within which to place items on an agenda in order to allow sufficient time for the agenda to be prepared, posted, and distributed to the commissioners. Items are placed on agendas in a variety of ways:

- In response to direction from the City Council.
- In response to a directive from the City Manager.
- In response to a petition from a citizen.
- As requested by any commissioner at a public meeting.
- In response to a request from the chairperson.
- As deemed necessary by the staff liaison.
- As requested by other boards and commissions.

Requested agenda items will be placed on an agenda as the associated work can be completed by the staff liaison.

Agendas are necessary to the conduct of a meeting and they inform the commission and the public of items that will be discussed. Items must be stated in a sufficiently clear way as to identify the subject matter and potential action(s) that can be taken. Placing an item on an agenda allows a commission to discuss and possibly act on an item.

## SPECIAL RULES

### STATE AND LOCAL RULES

Established guidelines and rules are essential to a productive and successful meeting. The City Council has established a successful format for conducting business at Council meetings and boards and commissions should follow those guidelines in conducting their own meetings. The City Council is bound first by the Arizona Revised Statutes, in particular the Open Meeting Law. The Flagstaff City Charter also establishes rules regarding the conduct and meetings of the City Council and is the local legal authority on several aspects of meeting activity.

The Charter of the City of Flagstaff provides that, in the absence of a conflict of interest, an abstention is counted as an affirmative vote:

“No member of the Council present at any meeting shall be excused from voting, except in matters involving the consideration of their own official conduct. In all other cases, a failure to vote shall be entered on the minutes as an affirmative vote.”



When a refusal to vote occurs, it is entered on the minutes as an affirmative vote with no explanation. The no-vote or abstention clause is intended to provide an incentive to vote. The provision also protects the public process and ensures that, at a minimum, a majority of members present at a meeting vote on an issue.

Following the form outlined in the Charter, the chairperson role is similar to that of the Mayor. A chairperson is a regular voting member of the commission. The chairperson may call a special meeting when deemed necessary. The chairperson also presides over meetings and acts as spokesperson for the commission when appropriate. As with the City Council, citizens may petition a commission to have an item placed on an agenda and the item is to be placed on the next available agenda, if possible.

## **BY-LAWS AND RULES OF PROCEDURE**

A commission may adopt specific by-laws or special rules so long as these do not conflict with State law, the Charter of the City of Flagstaff, or City ordinances or policy. The provisions in this handbook are designed to follow closely the rules and regulations established by the City Council and apply to all boards and commissions.

Of particular interest and application to Flagstaff's boards and commissions are the following rules regarding Meeting Decorum and Order, Right of Appeal from the Chair, Public Participation in Commission Discussions, and Rules Governing Motions by the Council. Adopted from the City Council's Rules of Procedure, wherever necessary, the language has been revised to fit boards and commissions.

## **MEETING DECORUM AND ORDER**

### **Decorum and Order among Commissioners**

The Chair shall preserve decorum and decide all questions of order, subject to appeal to the commission. During commission meetings, commissioners shall preserve order and decorum and shall not delay or interrupt the proceedings or refuse to obey the order of the Chair or the rules of the Commission. Every commissioner desiring to speak shall address the Chair, and upon recognition by the Chair, shall confine himself or herself to the question under debate and shall avoid all personal attacks and indecorous language. A commissioner once recognized shall not be interrupted while speaking unless called to order by the Chair or unless a point of order is raised by another commissioner. If a commissioner is called to order while he or she is speaking, he or she shall cease speaking immediately until the question of order is determined. If ruled to be out of order, he or she shall remain silent or shall alter his or her remarks so as to comply with the rules of the commission. Commissioners shall confine their questions to the particular issues before the commission. If the Chair fails to act, any member may move to require him or her to enforce the rules and the affirmative vote of the majority of the commission shall require the Chair to act.

### **Decorum and Order among Citizen Participants**

Citizens attending commission meetings shall also observe the same rules of propriety, decorum, and good conduct applicable to members of the commission. Any person making personal, impertinent, and slanderous remarks, or who becomes boisterous while addressing

the commission while attending a commission meeting, may be removed from the room if so directed by the Chair, and such person shall be barred from further audience before the commission. Unauthorized remarks from the audience, stamping of feet, whistles, yells, and similar demonstrations shall not be permitted by the Chair, who may direct the sergeant-at-arms to remove such offenders from the room. Should the Chair fail to act, any member of the commission may move to require the Chair to enforce the rules, and the affirmative vote of the majority of the commission shall require the Chair to act. Any member of the public desiring to address the commission shall be recognized by the Chair, shall state his or her name and address in an audible tone for the record, and shall limit his or her remarks to the questions under discussion. Any remarks shall be addressed to the Chair and to any or all members of the commission.

## **CIVILITY AT MEETINGS**

It is the chairperson's responsibility to maintain meeting civility, whether or not it is at the commissioner level, staff level, or audience level. Meetings should be conducted in a professional manner so that a commission's business is accomplished in a fair, impartial, and orderly manner. Inappropriate meeting conduct by both the participants and audience sets the example and tone for how the rest of the meeting will take place. Occasionally, a chairperson will be required to take steps to maintain control of the meeting by intervening in a controversial discussion and to bring control of the meeting back to the podium.

The Chairperson should not allow outbursts from the audience. Members of the audience should be reminded that, when it is their time to speak, they must address the board or commission, and not the city employee, consultant working on a project, or other citizens. When a member of the audience or the speaker at the podium displays hostile behavior toward the commission, city staff, paid consultant, or other citizens, it should be corrected in order to maintain control of the meeting.

Should the commission find itself in a meeting where emotions run high, the Chairperson is encouraged to, and has the authority to, take any of the following actions:

- Remind the speaker that comments are to be confined to the issue at hand and there are to be no attacks on any participant in the meeting.
- Cut off the speaker's remaining time.
- Revoke the speaker's speaking privilege.
- Remove a speaker from the meeting.
- Remind the audience that outbursts from the audience will not be allowed.
- Advise the audience that a 10-minute recess will be called if audience members do not refrain from catcalls and outbursts.
- Call a 10-minute recess and advise the audience that, when the meeting reconvenes, if hostilities and displays do not cease, the meeting will be continued to another date and time.
- Reconvene the meeting or continue the meeting to another night.

The audience should clearly understand that it is their behavior that dictates whether or not the meeting will proceed or be continued to another date.

## **RIGHT OF APPEAL FROM THE CHAIR**

### **Process for Appeal**

Any member may appeal to the commission from a ruling of the Chair. If the appeal is seconded, the member making the appeal may briefly state his or her reason for the same, and the Chair may briefly explain the Chair's ruling. There shall be no debate on the appeal, and no other member shall participate in the discussion. The Chair shall then put the question, "Shall the decision of the Chair be sustained?" If a majority of the members present vote "aye", the ruling of the Chair is sustained; otherwise, it is overruled.

## **PUBLIC PARTICIPATION IN COMMISSION DISCUSSIONS**

### **Call to the Public**

Commissions may make an open call to the public to allow individuals to speak up on any issue within its jurisdiction, however, commission members may not discuss or take action on matters raised during the call to the public that are not specifically identified on the agenda. Commission members may respond to criticism and/or ask that the matter be taken under review or placed on a future agenda.

Agendas should contain language that explains why commission members cannot respond and what the options are so that the public knows in advance what to expect.

### **Regular Agenda Items**

Public participants may address the commission on agenda items. The Chair must recognize the person before that person may address the public body and the speaker must identify his or her name ~~and address~~ and city of residence for the record. He or she shall limit his or her remarks to the matter under discussion and shall address his or her remarks to the Chair. The Chair shall limit the period of speaking to a reasonable period of time as specified by, and at the discretion of, the Chair.

### **Public Hearings**

In the case of a public hearing, the Chair shall announce prior to such hearing the total time limit to be allowed for public debate, depending upon the circumstances and public attendance. The Chair shall also announce the time limits for each speaker (normally no more than five minutes), and the number of times each speaker will be heard from during the public hearing (generally no more than twice, although the Chair may limit each speaker to one time where time constraints or the number of persons desiring to speak on an issue dictate otherwise). These rules will be announced with majority consent of the commission present. This rule will not preclude questions from members of the commission to the speaker where it is deemed necessary for purposes of clarification or understanding, but not for purposes of debate or argument.

## **Quasi-Judicial Hearings**

The Open Meeting Law defines a quasi-judicial body as "a public body, other than a court of law, possessing the power to hold hearings on disputed matters between a private person and a public agency and to make decisions in the general manner of a court regarding such disputed claims." Contested proceedings or quasi-judicial or adjudicatory proceedings conducted by public bodies are subject to all of the requirements of the Open Meeting Law, as well as a number of additional due process requirements. These due process requirements include: no ex-parte communication and an opportunity for the person to present their case through witnesses, cross-examination, and argument. Robert's' rules are difficult to apply to quasi-judicial hearings, and separate rules for such hearings may be necessary.

## **Limits on Public Participation**

Members of the public are limited to addressing the public body once on each item. They may not approach the chair multiple times. If an individual's issue cannot be addressed within the allotted time, the individual may submit additional written comments. If a commission member engages the speaker in discussion, the clock will be stopped and the speaker will not be penalized for the time spent answering the commissioner or for the commissioner's time in talking to the speaker.

Further, the public is expected to display courteous behavior. Inappropriate behavior is subject to forfeiture of allotted time to speak and may result in removal from the meeting.

## **RULES GOVERNING MOTIONS BY THE COMMISSION**

### **Motion to be Stated by the Chair – Withdrawal**

When a motion is made and seconded, it shall be so stated by the Chair before debate commences. A motion may not be withdrawn by the mover without the consent of the member seconding it.

### **Motion to Suspend Rules**

Suspension of these rules requires a majority consent of the commissioners present. A motion to suspend may not be made while another motion is pending unless it directly applies to the pending motion.

### **Motion to Change Order of Agenda**

The Chair may, at his or her discretion, or shall, upon the majority vote of commissioners present, change the order of the agenda. ~~A motion to change the order of the agenda shall be out of order when used to consider items which have not been placed on the agenda.~~ However, caution should be given to not changing the order to circumvent the Open Meeting Law.

### **Motion to Adjourn**

~~A motion to adjourn shall be in order at any time, except as follows: (a) when repeated without intervening business or discussion; (b) when made as an interruption of a member while speaking; (c) when the previous question has been ordered; and (d) while a vote is being taken. A motion to adjourn is debatable only as to the time to which the meeting is adjourned.~~

### **Motion to Table**

A motion to lay on the table shall preclude all amendments or debate on the subject under consideration **and is used to delay discussion on an item until later in the meeting or until the next meeting.** Neither the motion on the table or other business can be discussed, until a vote has been taken on the motion. **If the motion prevails, the consideration of the subject may be resumed only upon motion of a member voting with the majority of the members present. To take a motion off the table at the same or immediately succeeding meeting, a motion and second must be made to take the item off the table, and it must pass by majority vote. If not revived by the adjournment of the immediately succeeding meeting, the matter is considered to be dead.**

### **Motion to Divide the Question**

If the question contains two or more divisionable propositions, the Chair may, and upon request of a member, shall divide the same.

### **Motion to Amend**

On a motion to amend or “strike out and insert”, ~~the paragraph to be amended shall first be read as it stands, then the words proposed to be stricken out and those to be inserted shall be read, and finally the paragraph as it would stand if so amended shall be read,~~ **the motion shall be made so that the intent of the amendment is clear to the commission and public, and for the record.**

### **Motion to Amend an Amendment**

A motion to amend an amendment shall be in order, but one to amend an amendment to an amendment shall not be introduced. An amendment modifying the intention of a motion shall be in order, but an amendment relating to a different matter shall not be in order.

### **Motion to Reconsider**

After the decision on any question, any member who voted with the majority may move a reconsideration of any action at the same or the next succeeding meeting, provided, however, that a resolution authorizing or relating to any contract may be reconsidered at any time before the final execution thereof. A motion to reconsider shall require the same number of votes as is required to adopt an ordinance or resolution. After a motion for reconsideration has

once been acted on, no other motion for a reconsideration thereof shall be made without unanimous consent.

### **Motion for Roll Call Vote**

Any commissioner may request a roll call vote, or the Chair may ask for a roll call vote for purposes of clarifying a vote for the record. The roll may be called for yeas and nays upon any questions before the commission. Unless allowed by the Chair, it shall be out of order for members to explain their vote during the roll call, or to engage in additional debate or discussion on the subject after the vote is taken.

### **BY-LAWS**

Some of the City's boards and commissions have adopted bylaws or other rules of procedure. Your by-laws must not conflict the underlying ordinance or resolution that establishes your board or commission or other City policies, including this Handbook. In any conflicting provisions, your founding legislation or other City policies will prevail. To help avoid confusion, use your ordinance or resolutions to help you craft by-laws. This will assist you in addressing matters within your commission's mission as established by the City Council and keep you from straying outside the intent of your legislation.

Bylaws can be helpful in conducting the business of your board or commission by providing for such things as:

- Meeting Process
- Methods used to achieve the commission's mission
- Elections of chair and vice-chair and their length of office
- Appointment of subcommittees, task forces, and/or work groups.

### **ROBERT'S RULES OF PROCEDURE**

The City Council has adopted Robert's Rules of Procedures as its parliamentary authority. Robert Rules of Procedures contains within itself a provision that identifies itself as the last in the line of authority and last in the order of precedence. Thus, Robert's Rules should be the last authority, after all other existing authorities have been exhausted. If there is any conflict between Robert's Rules of Procedure and other laws or adopted rules, the other regulations control. The City Council's Rules of Procedure state, in ~~Rule 13, Section 12.04~~, in Rule 11, Section 11.04, that:

"Robert's Rules of Order, latest edition, shall govern the [commission] in all cases to which they are applicable, provided they are not in conflict with these rules or with the Charter of the City of Flagstaff or the laws of the State of Arizona."

It is important to remember that Robert's Rules of Procedure is a guide for conducting the business of a meeting and it is not the law. The only required actions to make an item legal are a motion, a second, and a vote. Within that motion, second, and vote, intent must be clear and those who vote on the matter must clearly understand the intent. Robert's Rules provides formulas for the sequencing of different kinds of motions and an orderly rule for conducting a

meeting. However, if a motion is plainly made, a second to the motion is placed on the record, and the voting participants understand the effect of their vote and support the outcome of the motion, it will stand up on its own even if it does not follow the letter of Robert's Rules.

Roberts Rules of Procedure establishes a fair and impartial process for commissions to conduct their business and it ensures that members get their say. A condensed version of Robert's Rules is included with this handbook for your reference.

## **CONDUCTING A SUCCESSFUL MEETING**

When representing and dealing with public concerns, fairness should be everyone's goal. Not everyone will be satisfied with the outcome of every decision your board or commission makes. However, equal treatment during the decision making process will leave most participants satisfied that they were treated fairly. To ensure every citizen receives fair and equitable treatment, meetings will benefit from the consistent application of the following guidelines for conducting a successful meeting:

### **GUIDELINES FOR CONDUCTING A SUCCESSFUL MEETING**

1. Give adequate and timely notice of all meetings.
2. Start and end each meeting on time.
3. Conduct all meetings in accordance with the Open Meeting Law, the City Charter, Council Rules of Procedure, and "Robert's Rules of Order."
4. Follow a published agenda—supply enough copies of the agenda for everyone attending the meeting.
5. **Ensure the place that you hold meetings can accommodate all members of the public who wish to attend.**
- 5.6. Limit the agenda to the number of topics that can be dealt with in the time allotted.
- 6.7. Allow time for discussion and comment, and **Notify** speakers in advance of the ~~7.~~—amount of time they will have to speak.
8. Announce the meeting format to the participants at the beginning of each meeting or, in some cases, portions thereof.
9. Cover the most urgent subjects first.
10. Let everyone be heard.
11. All speakers must be asked to identify themselves (name and **address city of residence**) for the record.
12. The Chairperson should facilitate the meeting so that no one person dominates the discussion.
13. Discuss the pros and cons of an issue after everyone has had an opportunity to present his/her point of view.
14. Try to keep your comments and questions neutral, focusing on the facts presented to you.
15. Direct your attention to the speaker, issue, or task at hand--do not be distracted by minor points.
16. Make decisions based on fact.
17. Avoid conflicts of interest (see Page 14).
18. Bring issues to a vote, with each member having the opportunity to explain his/her decision/point of view **(if appropriate)**.

19. For the benefit of the audience and participants, announce the voting results after each vote is taken.
20. Keep records of all actions taken.
21. Adjourn the meeting promptly when all business has been concluded.



# REMOVAL FROM APPOINTED OFFICE

Commissioners serve at the discretion of the City Council and, like any other Council-appointed position, may be removed from office by an official vote of the City Council. On a rare occasion, circumstances surrounding the conduct of a commissioner may necessitate disciplinary action. Following are examples of activities that can precipitate admonishment or removal from office:

- Violation of the Open Meeting Law.
- Refusal to sign the Official Oath of Office.
- More than two consecutive unexcused absences from regularly scheduled commission meetings.
- A 30% absenteeism rate or more from regularly scheduled commission meetings.
- Persistent or willful violation of the Conflict of Interest Law.
- Conduct jeopardizing the City's and community's best interests.
- Rude, abusive, slanderous, and/or disrespectful behavior directed at the public, city staff, or members of the City Council.
- Failure or refusal to participate in board and commission member training within a year of appointment, or when directed by the City Council, City Manager, or City Attorney.
- Violation of City policies.
- Unethical behavior.
- Using your status as a City official (board or commission member) in an attempt to influence the outcome of an election.
- Using your title as a City commissioner for personal purposes, to influence an election, or other unsanctioned activities not related to official commission business.
- Willful non-compliance with the provisions of this Handbook.
- Fraud, collusion, or coercion.
- Inefficiency, neglect of duty, or malfeasance in office.

**CITY OF FLAGSTAFF**  
**STAFF SUMMARY REPORT**

**To:** The Honorable Mayor and Council  
**From:** John Saltonstall, Business Retention & Expansion Manager  
**Date:** 01/30/2013  
**Meeting Date:** 02/05/2013



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**TITLE:**

**Consideration and Approval of an Agreement:** 2013 Rural Economic Development Grant Agreement from the Arizona Commerce Authority to the City of Flagstaff providing for a \$100,000 grant award for the expansion of Joy Cone Company.

**RECOMMENDED ACTION:**

Accept the award of the 2013 Rural Economic Development Grant Agreement in the amount of \$100,000 from the Arizona Commerce Authority for the expansion of Joy Cone Company.

**Policy Decision or Reason for Action:**

Approval will enable the City of Flagstaff to accept funds from the Arizona Commerce Authority for business expansion purposes at the Joy Cone Company. The Joy Cone Company currently employs 125 people; provides health insurance coverage to all full-time employees and their dependents; and wages are above the County median wage.

**Financial Impact:**

The City will incur nominal costs in the form of administrative oversight of the grant. Oversight of the grant will be performed by the Management Services Division and Economic Vitality Division staff. There is no cost allowance for City staff time in the grant.

**Connection to Council Goal:**

Retain, expand, and diversify economic base.

**Has There Been Previous Council Decision on This:**

No.

**Options and Alternatives:**

- 1) Approve the acceptance of the grant from the Arizona Commerce Authority to the City of Flagstaff for business expansion purposes in Flagstaff.
- 2) Reject the award of grant from the Arizona Commerce Authority to the City of Flagstaff.

**Background/History:**

Joy Cone Company was originally founded as the George and Thomas Cone Company in 1918 and continues to be a family owned company to this day. Joy Cone Company acquired property at the Flagstaff Pulliam Airpark Business Center in 1996 to build their first phase. After several expansions, bringing their facility to over 200,000 square feet, Joy Cone Company is now the largest ice cream cone manufacturer in the world with total annual production exceeding two billion cones.

Currently, Joy Cone Company is experiencing growing demand that exceeds their current production capabilities. Joy Cone Company and the City of Flagstaff developed an application to the Rural Economic Development Grant Program offered by the Arizona Commerce Authority for the purpose of addressing increased production capabilities. The Arizona Commerce Authority notified the City of Flagstaff on December 11, 2012, that the project was selected to receive \$100,000 for expansion purposes. The project will decommission an incinerator which is no longer necessary for operations and expand production capabilities, as well as allow for the hiring of five (5) new employees. Joy Cone Company will match the grant amount of \$100,000 with \$900,000 of Joy Cone Company funds.

**Key Considerations:**

This project expands business operations, increases low impact high-wage jobs and supports our base economy. This project supports environmental stewardship by decommissioning their old incinerator resulting in less energy being used for burning waste and reduced emissions related to the process. All the waste that was formerly processed through the incinerator will now be sold to other industries that are able to convert that food waste into commercial product.

**Expanded Financial Considerations:**

The City of Flagstaff Business Retention and Expansion Office requested \$100,000 from the Arizona Commerce Authority on behalf of Joy Cone Company for the project. Joy Cone Company will match the \$100,000 grant funds with \$900,000 resulting in a \$1,000,000 project.

While there is no allowance for the oversight of the project for City staff, oversight is seen as minimal. Joy Cone Company will be required to report progress to the Arizona Commerce Authority through the City of Flagstaff. City staff will receive, review, and deliver reports to the Arizona Commerce Authority. As a reimbursement program, Joy Cone Company will invoice the City for expenditures. The City will confirm expenditures and then invoice the Arizona Commerce Authority.

**Community Benefits and Considerations:**

The community derives great benefit from the continued presence and growth of a company that empowers employees, and compensates employees with a livable wage and health insurance coverage. Joy Cone Company also demonstrates environmental stewardship consistent with the values of this community by eliminating their use of an incinerator.

**Community Involvement:**

None required.

**Council Action:**

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**Attachments:**     Oct 1, 2012, ACA Application  
                             2013 Rural Economic Development Grant Agreement #13-003

Proposal to the Arizona Commerce Authority

***City of Flagstaff  
Joy Cone Company  
Project Recipe for Growth***



Contact:

John Saltonstall  
Business Retention and Expansion Manager  
Economic Vitality Division  
City of Flagstaff  
211 W. Aspen Avenue  
Flagstaff, AZ 86001  
928-213-2966  
[jsaltonstall@flagstaffaz.gov](mailto:jsaltonstall@flagstaffaz.gov)

October 1, 2012

## EXHIBIT A

### 2013 RURAL GRANT – ECONOMIC DEVELOPMENT GRANT

#### PROJECT SUMMARY

(to be included with all submitted Applications)

#### APPLICANT INFORMATION

**Applicant Entity Name:** City of Flagstaff  
**Address:** 211 W. Aspen Avenue  
**Contact Name and Title:** John Saltonstall, Business Retention & Expansion Manager  
**Contact Email:** [JSaltonstall@flagstaffaz.gov](mailto:JSaltonstall@flagstaffaz.gov)  
**Contact Phone:** 928-213-2966

#### PROJECT INFORMATION

**Does your Application include:** ☒ One Project ☐ Multiple Projects

Please complete below for each project if multiple projects are included.

**Project Name:** Project Recipe for Growth  
**Brief Project Description:** Joy Cone Company's Flagstaff facility will decommission existing incinerator, then design and build a second batter room  
**Grant Amount Requested:** \$100,000.00

#### Projected Outcomes

**Number of New Jobs:** Five  
**Average Wages:** \$45,000.00  
**New Payroll:** \$225,000.00  
**Capital Investment:** \$1,000,000.00

## **APPLICANTS QUALIFICATIONS**

### **Management Team**

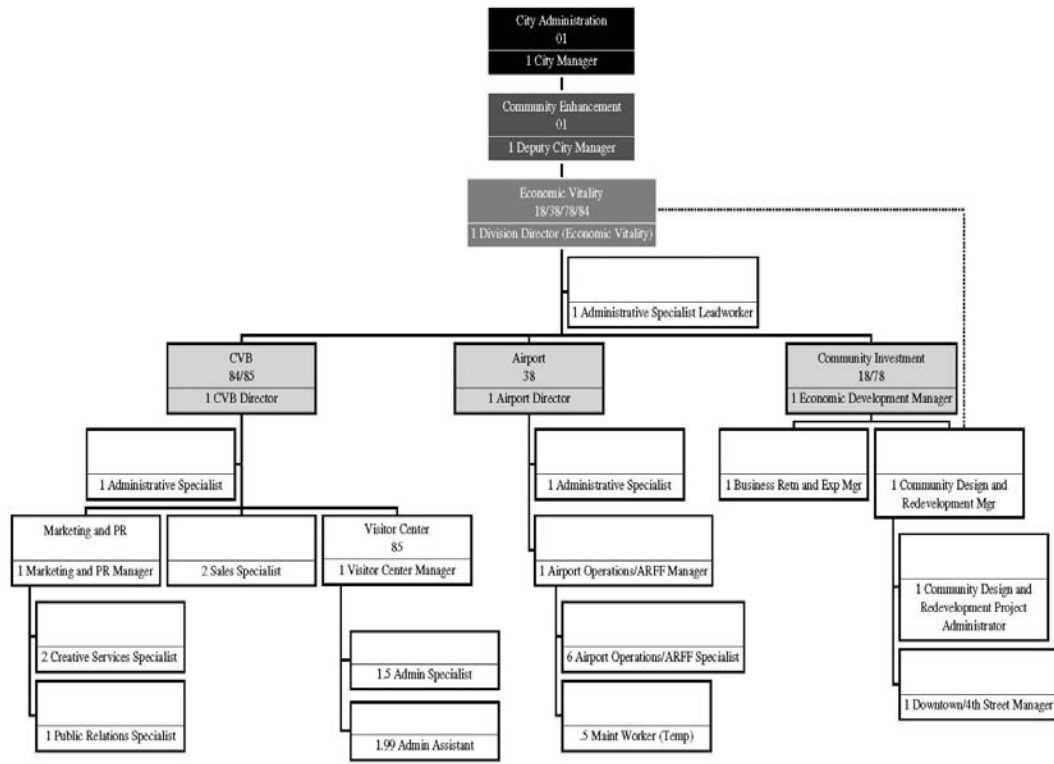
**John Saltonstall** (City of Flagstaff Project Coordinator) As the Business Retention and Expansion Manager, John manages federal, state, and city economic development programs in support of Flagstaff's business community. He is responsible for executing all initiatives and activities to facilitate local business retention and expansion, including, but not limited to: grant submission and administration, targeted job training, management of business retention and expansion programs, site selection assistance, business evaluation and general economic development assistance.

**Stacey Brechler-Knaggs** - The City of Flagstaff has a full time Grants Manager position which involves researching, monitoring, and applying for available grants, as well as monitoring, implementing, evaluating, and assuring the compliance of terms and conditions, and in general, is the central coordinator for all grants. Duties include internal auditing and holding others accountable for proper grant compliance. The accountants assigned to the grants have a high level of technical expertise in governmental budgeting and accounting. In addition, the project representatives have extensive knowledge in the targeted areas in which they are seeking funds and administering the funded programs.

The City's grant management team will be working closely with Mr. Joe Pozar, Jr. of Joy Cone Company to assure minimal impact to their operations. Mr. Pozar and his team will be providing input as to the design of the new batter room.

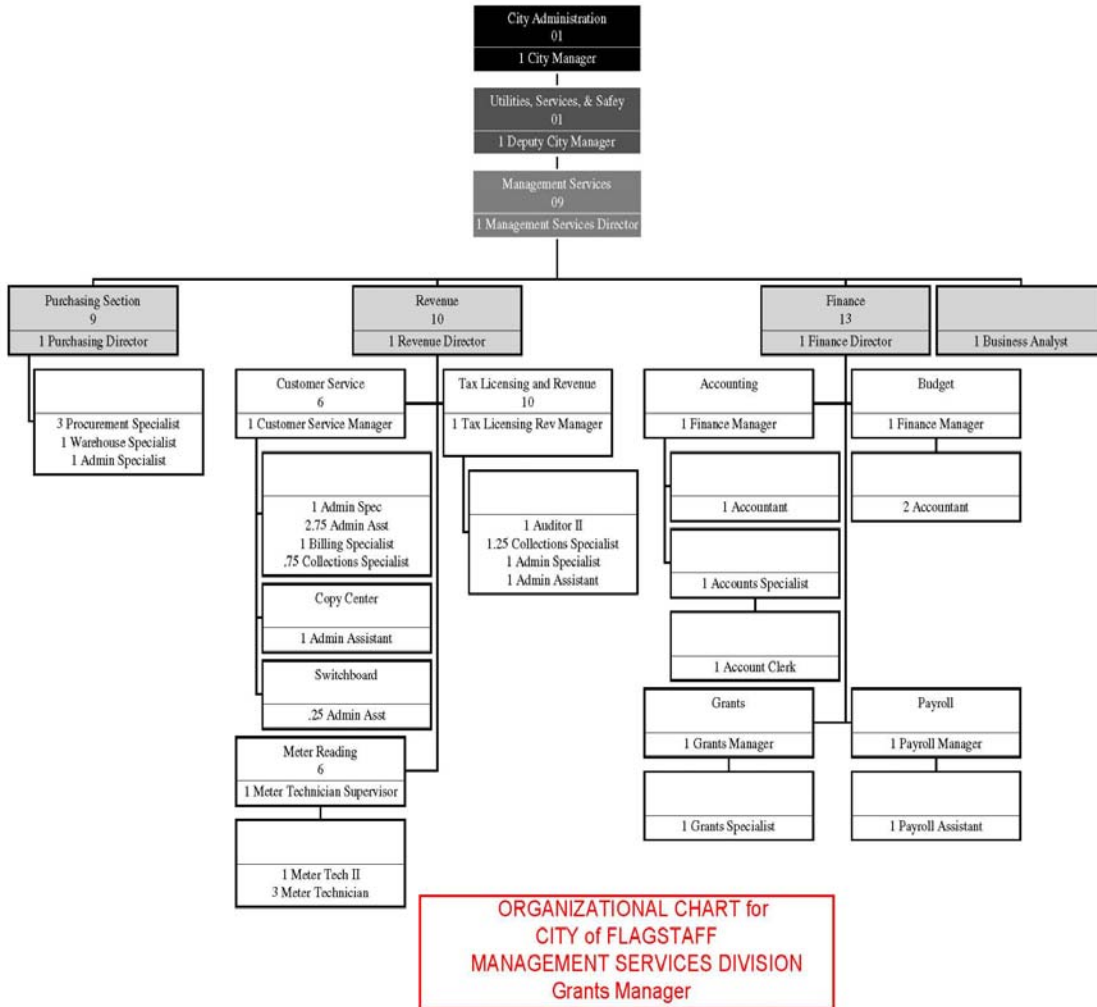
**Joe Pozar, Jr.** - As the Plant Manager of Joy Cone Company's Flagstaff facility, Mr. Pozar is responsible for all Western facility personnel, operations, and goals for all departments. He directs and coordinates plant operations within company policy and procedure to ensure safe quality products for all customers. Mr. Pozar has over 12 years experience with Joy Cone Company and has worked in every production and warehouse position. Mr. Pozar is active in the community and is on the board of the Flagstaff Chamber of Commerce.

## ECONOMIC VITALITY



ORGANIZATIONAL CHART for  
 CITY of FLAGSTAFF  
 ECONOMIC VITALITY DIVISION  
 Business Retention and Expansion Manager

## MANAGEMENT SERVICES





## **Project Narrative – Executive Summary**

The City of Flagstaff's Economic Vitality Division is pleased to submit this grant request for assistance in converting Joy Cone Company's incinerator room into a second batter room. The increased production prepares the plant for additional capital investment in future years, including additional and higher output ovens, as well as five new manufacturing jobs by December 2013.

The City of Flagstaff in collaboration with the Joy Cone Company, is proposing a project that will leverage Joy Cone Company's investment to secure funds awarded under this Arizona Commerce Authority Rural Economic Development Grant. The total project is estimated to cost approximately \$1,000,000 with Joy Cone Company investing \$900,000 and a requested grant award of \$100,000 from the Arizona Commerce Authority.

### **Background**

In 1996, Joy Cone Company acquired land in Flagstaff's Airpark to build a facility manufacturing ice cream cones to serve the Western States. Since 1996, Joy Cone Company has made several additions to their manufacturing facility which is now greater than 200,000 square feet. This growth has made Joy Cone Company the largest manufacturer of ice cream cones in the world with annual production of over two billion produced annually. Joy Cone Company has successfully partnered with the City of Flagstaff, the Economic Collaborative of Northern Arizona (ECoNA), and the Arizona Commerce Authority (ACA) in previous expansion projects that have resulted in an employee body of 125 people, with an increasing number of employees who have been with the company for over ten years. As of September 2012, Joy Cone Company has added 20 new employees at its Flagstaff facility.

### **Problem to Be Addressed by Project**

With the growth in business and increased demand, Joy Cone Company plans to meet demand by maintaining operational efficiencies while increasing production capabilities. At present, limited capacity in the batter rooms results in an increasing percentage of downtime. By decommissioning the existing incinerator and converting that space into a second batter room, Joy Cone Company will increase capacity, limit downtime, while being poised to further invest in their operations with an additional high efficiency oven in the next few years.

### **Project Objective**

The objective is to have a second batter room to meet the increased production needs of the current facility and to meet the production needs of future expansions as well. Currently, Joy Cone Company operates out of one batter room. This room has equipment that mixes three different batches, (Cake, Sugar and Waffle) this is done with two mixers, one for Cake and the other being for Sugar and Waffle. At the current demand, Joy Cone Company is at or above its capacity for Sugar and Waffle batter production. The current batter room does not have the space to add the additional equipment to expand capacity. Therefore, the additional room is needed to add the required equipment to meet and grow expectations. The new room will house two mixers, one for Sugar and the other for Waffle. This will eliminate the shared use of one mixer. It will also house three holding tanks for finished batters. With these two improvements, Joy Cone Company will have the capacity to expand its production, make further capital investment in the Flagstaff facility, and increase jobs.

### **Project Impact**

As is evidenced by Joy Cone Company's several expansions of their facility, Joy Cone Company is committed to Flagstaff. Their addition of 65,000 sq. ft., completed in 2009, allowed the company to increase employment in 2010 by 15 new hires. The recent Rail Spur Extension Project of 2011 contributed to an additional ten new hires. The average salary of all Joy Cone Company's

employees exceeds \$45,000. Without the new batter room further expansion and job creation will become more difficult.

## **Project Outcomes**

As stated earlier, the primary objective of this project is to continue to increase capital investment that will increase production and create more well-paying manufacturing jobs in the Flagstaff region. The outcomes of this project will greatly further the positive impact that the Joy Cone Company is having on the local economy. Joy Cone Company is the largest producer of ice cream cones in the world, manufacturing close to two billion cones between its Pennsylvania and Flagstaff facilities. The industry continues to grow despite the tough economic times the country has endured over the past several years. One important measure of the impact of Joy Cone Company's growth is the continuous expansion of jobs that Joy Cone Company provides.

## **Jobs**

Joy Cone Company has a strong desire to grow in Flagstaff, throughout the years, Joy Cone Company has tried several strategies for hiring. They have hired college students, High School Students, Local and Outside of Flagstaff. Joy Cone Company believes that to continue to have success here in Flagstaff, they must stay local and promote from within. Joy Cone Company strongly believes that promoting current employees to positions with authority is the only direction to go. This not only opens new entry level employment, it adds income to current employees. Joy Cone Company currently has 125 employees with the average salary exceeding \$45,000. With the expansion of the second batter room, Joy Cone Company will need to add 5 new positions. This second batter room will create an opportunity for 5 current employees to be promoted into a higher paying position, which in turn will create 5 new positions that will be new hires. More importantly, with this expansion, Joy Cone Company will have the capacity to continue to grow in the future and create more employment opportunity.

## **Community Impact**

Joy Cone Company continues to have a tremendous positive impact on Flagstaff and Northern Arizona. Their product, ice cream cones, has proven to be recession resistant. Even through, what is being called the greatest recession of a generation and being compared to the Great Depression, the Joy Cone Company has continued to flourish, by investing in its facilities, capital equipment and its people. It is one of only a handful of manufacturing employers in the greater Flagstaff region that has not had to lay-off employees during the recent economic downturn.

Beyond the immediate wage and other operational dollars spent in the region, there is a multiplier effect of Joy Cone Company's growth. A recent study conducted by Northern Arizona University's Center for Business Outreach estimated that manufacturing operations have a "direct" and "induced" effect on the creation of jobs in the community. These are jobs that are needed to support the manufacturing employees and other Joy Cone Company employees. This direct and induced job creation is estimated to be as high as 1.9 jobs in the community for every Joy Cone Company employee.

In summary, any future expansion of Joy Cone Company's Flagstaff facility will be greatly impacted by the limitations of the current batter room. The limited capacity has already affected the production of Sugar and Waffle Cones. The percentage of downtime of Sugar and Waffle Cones increased from .9% to 1.4% from 2011 to 2012. By addressing the batter room capacity limitation issues, the Joy Cone

Company will hire new employees and will be prepared for future facility expansion and related job creation.

**Project Tasks and Costs**

Joy Cone Company has been deliberating about the particulars of the project for some time. From these discussions, the following tasks, timeframes and estimated costs were derived.

**Decommissioning the Incinerator**

The proposed auxiliary room is outfitted with an incinerator. Before conversion to a batter room, this piece of equipment must be properly decommissioned and removed from the facility.  
Estimated cost: \$50,000.00

**Architectural and Structural Engineering**

To accept batter room equipment, to include: overhead weigh hoppers, mixers, batch coolers and an overhead vacuum hoist, the building structure of the auxiliary room must be modified for the new equipment loads. The new structure must comply with all state and local building codes.  
Estimated cost: \$100,000.00

**System Design and Process Engineering**

Concurrently, the bulk ingredient handling equipment and batter room equipment, to include: overhead weigh hoppers, mixers, batch coolers, discharge pumps, automatic control valves and automatic controls will be engineered to integrate with our existing operation by outside contractor.  
Estimated cost: \$150,000.00

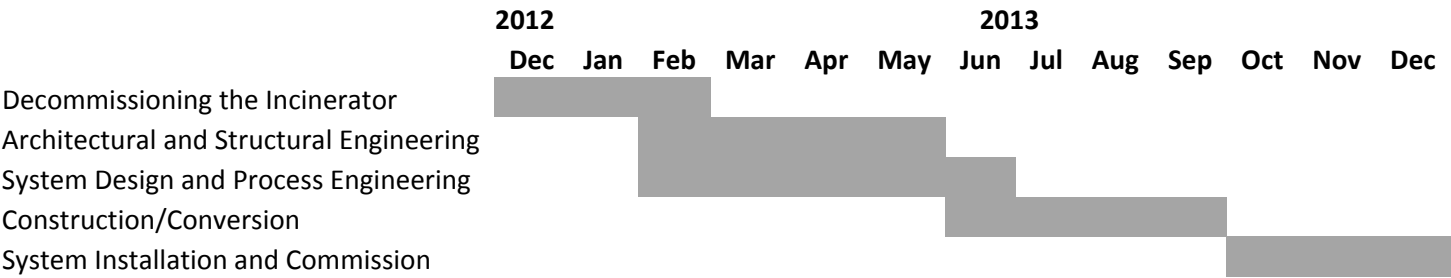
**Construction/Conversion**

Once the architectural and system designs are agreeable, the physical conversion and structural addition to the room will commence as per the architectural plans.  
Estimated cost: \$240,000.00

**System Installation and Commission**

Denoting the completion of construction and conversation phase, the City of Flagstaff's Building and Safety Program will issue the certificate of occupancy. This will start the final phase; installing and commissioning the batter room equipment.  
Estimated cost: \$460,000.00

**Project Timeline**



## Budget Narrative and Detail

This request is for the design and conversion of the incinerator room into a second batter room dedicated to Sugar and Waffle cone production only. The current batter room would be dedicated to Cake cone only. The need for this expansion is particularly evident when the facility runs both sugar and waffle ovens simultaneously. Currently, only the Lee ribbon blender mixes sugar and waffle batter. The mixer cannot be adequately cleaned between sugar and waffle batter in the time it takes for the batter to discharge out of the waffle batter. Consequently, the quality and efficiency of the SCF1, WCF1, and WBF1 lines suffers.

## BUDGET

### Sources of Funding

Arizona Commerce Authority Rural Economic Development Grant	\$	100,000
Joy Cone: Cash Contribution	\$	900,000
<b><i>Total of Proposed Funding Sources</i></b>	<b>\$</b>	<b>1,000,000</b>

### Uses of Funding

Decommissioning the Incinerator	\$	50,000
Architectural and Structural Engineering	\$	100,000
System Design and Process Engineering	\$	150,000
Construction/Conversion	\$	240,000
System Installation and Commission	\$	460,000
<b><i>Total Project Cost</i></b>	<b>\$</b>	<b>1,000,000</b>

## List of Attachments

1. Letter of Support from Joy Cone Company President
2. Letter of Support from Coconino County Career Center



**Arizona Commerce Authority**  
**GRANT AGREEMENT**  
**2013 Rural Economic Development Grant**  
**Award REDG 13-003**

**Arizona Commerce Authority**  
**333 North Central Avenue**  
**Suite 1900**  
**Phoenix, Arizona 85004**  
**(602) 845-1200**

City of Flagstaff		For clarification of this offer, contact:	
(Grantee Name)		Name:	John Saltonstall (Business Retention & Expansion Manager) or Stacey Brechler-Knaggs (Grants Manager)
211 W. Aspen Avenue,		Telephone	928-213-2966 <a href="mailto:jsaltonstall@flagstaffaz.gov">jsaltonstall@flagstaffaz.gov</a>
Flagstaff, AZ 86001		No. & Email	928-213-2227 <a href="mailto:sknaggs@flagstaffaz.gov">sknaggs@flagstaffaz.gov</a>
86-6000244			
Federal Employer Identification Number or SSN		Signature of Person Authorized to Sign Offer	Date
088302625		Kevin Burke, City Manager	
DUNS #		Printed Name and Title	

- 1. Award.** Grantee is hereby awarded a grant in the amount of \$100,000 (the "Grant") under the ACA Rural Economic Development Grant Program (the "Program") for Grantee's proposal for the Project Recipe for Growth (the "Project," as summarized in the attached Project Summaries section) included in Grantee's proposal dated October 2012 (the "Proposal"). (See attached Awards section for details regarding award amounts and approved uses of Grant funds.)
- 2. Project Implementation.** Grantee's receipt of Grant funds and Grantee's distribution of Grant funds to the Projects shall be conditioned upon the Projects being implemented substantially in conformance with the descriptions of the Projects in the Proposal. Grantee shall be responsible for monitoring the progress of the Projects and managing Grant funds accordingly (which may include distributing, withholding or returning Grant funds, as applicable).
- 3. Grant Documents.** This Grant Agreement incorporates and includes the terms and conditions of both the 2013 Rural Economic Development Grant Program Summary ("Summary") and Grantee's Proposal. Wherever there is a conflict among any two or three of (i) this document, (ii) the Proposal and (iii) the Summary, this document shall prevail over the Summary and the Proposal and the Summary shall prevail over the Proposal.
- 4. Term.** The term of the Grant is one year from the execution of this Agreement. No extensions will be provided and reimbursements will be made only for work completed during the term of the Grant.
- 5. Scrutinized Business Operations.** In Accordance with A.R.S. §35-391, *et seq.*, and A.R.S. §35-393, *et seq.*, the Grantee hereby certifies that the Grantee does not have scrutinized business operations in Iran or Sudan.
- 6. Discrimination.** The Grantee shall not discriminate against any employee or contractor for employment in violation of Federal Executive Order 11246, State Executive Order 99-4 or A.R.S. §§ 41-1461 through 1465.
- 7. Compliance with the law; E-Verify.** Grantee warrants compliance with all federal immigration laws and regulations relating to employee and warrants compliance with A.R.S. § 23-214. A breach of grantee's warranty regarding compliance with immigration laws and regulations shall be deemed a material breach of this Agreement and the Authority, in such event, may terminate this Agreement.
- 8. Equipment.** Before making any reimbursements for equipment with Grant funds, Grantee will require the owner of the equipment to sign the Arizona Commerce Authority "Equipment Certification" document.
- 9. Cooperation with the Authority.** Awardee authorizes and gives full consent to the Authority to copyright, publish, reproduce, promote or otherwise use its appearance, company brand, company images, testimonials and any other pertinent information in any manner, in any format or for any promotional/advertising purpose, including without limitation for public exhibits, displays, publications, art, website and advertising.
- 10.** This Agreement is subject to the attached ACA Uniform Terms and Conditions.



Arizona Commerce Authority

**GRANT AGREEMENT**

**2013 Rural Economic Development Grant**

**Award REDG 13-003**

**Arizona Commerce Authority**

**333 North Central Avenue**

**Suite 1900**

**Phoenix, Arizona 85004**

**(602) 845-1200**

**11. By signing above, Grantee agrees to the foregoing terms and conditions.**

This Agreement shall henceforth be referred to as Grant Agreement REDG-13-003.

\_\_\_\_\_  
Sandra Watson, President & CEO

\_\_\_\_\_  
Date

**Grant Agency: Arizona Commerce Authority**  
**Project Title: 2013 Rural Economic Development Grant**  
**Grant Number: REDG 13-003**

Attest:

---

City Clerk

Approved as to Form:

---

City Attorney



## PROJECT SUMMARIES

<b>Project Name:</b>	Project Recipe for Growth
<b>Brief Project Description:</b>	Joy Cone Company's Flagstaff facility will decommission their existing incinerator, providing space to design and build a second batter room.
<b>Grant Amount Requested:</b>	\$100,000
<b>Projected Outcomes</b>	
<b>Number of new jobs:</b>	5 by end of 2013
<b>Average Wages:</b>	\$45,000
<b>New Payroll:</b>	\$225,000
<b>Capital Investment:</b>	\$1,000,000

## AWARD

**Project: Project Recipe for Growth**

Company: Joy Cone Company

Amount Awarded: \$100,000

Authorized expenses: As set forth in the following chart.

Uses of Funding	Amount
Decommissioning of Incinerator	\$ 50,000
Architectural and Structural Engineering	\$100,000
System Design and Process Engineering	\$150,000
Construction/Conversion	\$240,000
System Installation and Commission	\$460,000
<b>TOTAL</b>	<b>\$1,000,000</b>

**Invoices**

Once a portion or the entire project is completed, grantees will send an invoice to the ACA grant manager for reimbursement of approved costs actually incurred to date. Invoices must include backup documentation, including copies of all invoices submitted from subcontractors or other sources to the grantee for work done on the project. Invoices are to be submitted only ONCE a month and with the required progress report.

# UNIFORM TERMS AND CONDITIONS

## ARIZONA COMMERCE AUTHORITY (ACA) UNIFORM TERMS AND CONDITIONS

### 1. Definition of Terms

As used in this Solicitation and any resulting Contract, the terms listed below are defined as follows:

- 1.1. *"ACA"* means the Arizona Commerce Authority.
- 1.2. *"ACA Fiscal Year"* means the period beginning with July 1 and ending June 30.
- 1.3. *"Attachment"* means any item a Solicitation requires an Offeror to submit as part of an Offer.
- 1.4. *"Contract"* means the combination of the Solicitation, including the Uniform and Special Instructions to Offerors, the Uniform and Special Terms and Conditions, and the Specifications and Statement or Scope of Work; the Offer and any Best and Final Offers; and any Solicitation Amendments or Contract Amendments.
- 1.5. *"Contract Amendment"* means a written document signed by the parties that is issued for the purpose of making changes in the Contract.
- 1.6. *"Contractor"* means any person who has a Contract with the Arizona Commerce Authority (ACA).
- 1.7. *"Days"* means calendar days unless otherwise specified.
- 1.8. *"Exhibit"* means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.
- 1.9. *"Gratuity"* means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.
- 1.10. *"Materials"* means all property, including equipment, supplies, printing, insurance and leases of property but does not include land, a permanent interest in land or real property or leasing space.
- 1.11. *"Offer"* means an offer to provide the goods and/or services specified in a Solicitation, such as a bid, Proposal or quotation.
- 1.12. *"Offeror"* means a vendor who submits an Offer to the ACA.
- 1.13. *"Services"* means the furnishing of labor, time or effort by a Contractor or subcontractor which does not involve the delivery of a specific end product other than required reports and performance, but does not include employment agreements or collective bargaining agreements.
- 1.14. *"Solicitation"* means an Invitation for Bids ("IFB"), a Request for Proposals ("RFP"), or a Request for Quotations ("RFQ").
- 1.15. *"Solicitation Amendment"* means a written document that is signed by the ACA and issued for the purpose of making changes to the Solicitation.

## UNIFORM TERMS AND CONDITIONS

- 1.16. *"Subcontract"* means any Contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or any service required for the performance of the Contract.

### 2. Contract Interpretation

- 2.1. Arizona Law. Arizona law applies to this Contract including, where applicable, the Uniform Commercial Code as adopted by the ACA of Arizona. (Please note: The ACA is exempt from Title 41, Chapter 23 of the Arizona Revised Statutes (the Procurement Code)).
- 2.2. Implied Contract Terms. Each provision of law and any terms required by law to be in this Contract are a part of this Contract as if fully stated in it.
- 2.3. Contract Order of Precedence. In the event of a conflict in the provisions of the Contract, as accepted by the ACA and as they may be amended, the following shall prevail in the order set forth below:
- 2.3.1. Special Terms and Conditions;
  - 2.3.2. Uniform Terms and Conditions;
  - 2.3.3. Statement or Scope of Work;
  - 2.3.4. Specifications;
  - 2.3.5. Attachments;
  - 2.3.6. Exhibits;
  - 2.3.7. Documents referenced or included in the Solicitation.
  - 2.3.8. Offer.
- 2.4. Relationship of Parties. The Contractor under this Contract is an independent Contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.
- 2.5. Severability. The provisions of this Contract are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Contract.
- 2.6. No Parole Evidence. This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.
- 2.7. No Waiver. Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

### 3. Contract Administration and Operation

- 3.1. Records. Under A.R.S. § 35-214 and § 35-215, the Contractor shall retain and shall contractually require each subcontractor to retain all data and other "records"

## UNIFORM TERMS AND CONDITIONS

relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract. All records shall be subject to inspection and audit by the ACA at reasonable times. Upon request, the Contractor shall produce a legible copy of any or all such records.

- 3.2. Non-Discrimination. The Contractor shall comply with ACA Executive Order No. 2009-09 and all other applicable Federal and ACA laws, rules and regulations, including the Americans with Disabilities Act.
- 3.3. Audit. Pursuant to ARS § 35-214, at any time during the term of this Contract and five (5) years thereafter, the Contractor's or any subcontractor's books and records shall be subject to audit by the ACA and, where applicable, the Federal Government, to the extent that the books and records relate to the performance of the Contract or Subcontract.
- 3.4. Facilities Inspection and Materials Testing. The Contractor agrees to permit access to its facilities, subcontractor facilities and the Contractor's processes or services, at reasonable times for inspection of the facilities or materials covered under this Contract. The ACA shall also have the right to test, at its own cost, the materials to be supplied under this Contract. Neither inspection of the Contractor's facilities nor materials testing shall constitute final acceptance of the materials or services. If the ACA determines non-compliance of the materials, the Contractor shall be responsible for the payment of all costs incurred by the ACA for testing and inspection.
- 3.5. Notices. Notices to the Contractor required by this Contract shall be made by the ACA to the person designated in the Contract to receive notices or, if no one is designated to receive notices, the person named as the primary contact. Unless otherwise stated in the Contract, notices to the ACA required by the Contract shall be made by the Contractor to the ACA's Procurement Manager. An authorized ACA signer and an authorized Contractor representative may change their respective person to whom notice shall be given by written notice to the other and an amendment to the Contract shall not be necessary.
- 3.6. Advertising, Publishing and Promotion of Contract. The Contractor shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the ACA.
- 3.7. Ownership of Intellectual Property. This contract does not authorize the ownership by or transfer to the ACA any of Contractor's intellectual property.
- 3.8. Federal Immigration and Nationality Act. The Contractor shall comply with all federal, state and local immigration laws and regulations relating to the immigration status of their employees during the term of the Contract. Further, the Contractor shall flow down this requirement to all subcontractors utilized during the term of the Contract. The ACA shall retain the right to perform random audits of Contractor and subcontractor records or to inspect papers of any employee thereof to ensure compliance. Should the ACA determine that the Contractor and/or any subcontractors be found noncompliant, the ACA may pursue all remedies allowed by law, including, but not limited to; suspension of work, termination of the Contract for

## UNIFORM TERMS AND CONDITIONS

default and suspension and/or debarment of the Contractor.

- 3.9 E-Verify Requirements. In accordance with A.R.S. § 41-4401, Contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section A.R.S. § 23-214, Subsection A.
- 3.10 Scrutinized Businesses. In accordance with A.R.S. § 35-391 and A.R.S. § 35-393, Contractor certifies that the Contractor does not have scrutinized business operations in Sudan or Iran.
- 3.11 Offshore Performance of Work Prohibited.

Any services that are described in the specifications or scope of work that directly serve the ACA of Arizona or its clients and involve access to secure or sensitive data or personal client data shall be performed within the defined territories of the United States. Unless specifically stated otherwise in the specifications, this paragraph does not apply to indirect or 'overhead' services, redundant back-up services or services that are incidental to the performance of the Contract. This provision applies to work performed by subcontractors at all tiers.

#### 4. Costs and Payments

- 4.1. Payments. Payments shall comply with the requirements of A.R.S. Titles 35 and 41, Net 30 days. Upon receipt and acceptance of goods or services, the Contractor shall submit a complete and accurate invoice for payment from the ACA within thirty (30) days.
- 4.2. Delivery. Unless stated otherwise in the Contract, all prices shall be F.O.B. Destination and shall include all freight delivery and unloading at the destination.
- 4.3. Applicable Taxes.
  - 4.3.1. Payment of Taxes. The Contractor shall be responsible for paying all applicable taxes.
  - 4.3.2. State and Local Transaction Privilege Taxes. The ACA is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure to collect such taxes from the buyer does not relieve the seller from its obligation to remit taxes.
  - 4.3.3. Tax Indemnification. Contractor and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall, and require all subcontractors to hold the ACA harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.
  - 4.3.4. IRS W9 Form. In order to receive payment the Contractor shall have a current

I.R.S. W9 Form on file with the ACA of Arizona, unless not required by law.

## UNIFORM TERMS AND CONDITIONS

- 4.4. Availability of Funds for the Next ACA fiscal year. Funds may not presently be available for performance under this Contract beyond the current state fiscal year. No legal liability on the part of the ACA for any payment may arise under this Contract beyond the current state fiscal year until funds are made available for performance of this Contract.
- 4.5. Availability of Funds for the current ACA fiscal year. Should the Arizona State Legislature enter back into session and reduce the appropriations or for any reason and these goods or services are not funded, the ACA may take any of the following actions:
- 4.5.1. Accept a decrease in price offered by the Contractor;
- 4.5.2. Cancel the Contract; or
- 4.5.3. Cancel the Contract and re-solicit the requirements.

### 5. Contract Changes

- 5.1. Amendments. The Contract may be modified only through a written Contract Amendment signed by the parties. Changes to the Contract, including without limitation the addition of work or materials, the revision of payment terms, or the substitution of work or materials, purported to be made by a person who is not specifically authorized by the ACA to execute the Contract Amendment shall be void and without effect, and the Contractor shall not be entitled to any claim under this Contract based on those changes.
- 5.2. Subcontracts. The Contractor shall not enter into any Subcontract under this Contract for the performance of this Contract without the advance written approval of the ACA. The Contractor shall clearly list any proposed subcontractors and the subcontractor's proposed responsibilities. The Subcontract shall incorporate by reference the terms and conditions of this Contract.
- 5.3. Assignment and Delegation. The Contractor shall not assign any right nor delegate any duty under this Contract without the prior written approval of the ACA. The ACA shall not unreasonably withhold approval.

### 6. Risk and Liability

- 6.1. Risk of Loss: The Contractor shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with the Contractor regardless of receipt.
- 6.2. Indemnification
- 6.2.1. Contractor Indemnification (Not Public Agency) The parties to this Contract agree that the ACA, the State of Arizona, its departments, agencies, boards and commissions shall be indemnified and held harmless by the Contractor for the vicarious liability of the ACA as a result of entering into this Contract. However, the parties further agree that the ACA, the State of Arizona, its departments, agencies, boards and commissions shall be responsible for its

## UNIFORM TERMS AND CONDITIONS

own negligence. Each party to this Contract is responsible for its own negligence.

6.2.2. Public Agency Language Only Each party (as 'Indemnitor') agrees to indemnify, defend, and hold harmless the other party (as 'Indemnitee') from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as 'Claims') arising out of bodily injury of any person (including death) or property damage but only to the extent that such Claims which result in vicarious/derivative liability to the Indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers.

6.3. Indemnification - Patent and Copyright. The Contractor shall indemnify and hold harmless the ACA against any liability, including costs and expenses, for infringement of any patent, trademark or copyright arising out of Contract performance or use by the ACA of materials furnished or work performed under this Contract. The ACA shall reasonably notify the Contractor of any claim for which it may be liable under this paragraph. If the Contractor is insured pursuant to A.R.S. § 41-621 and § 35-154, this section shall not apply.

6.4. Force Majeure.

6.4.1 Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term "*force majeure*" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions- intervention-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.

6.4.2. Force majeure shall not include the following occurrences:

6.4.2.1. Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market;

6.4.2.2. Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition; or

6.4.2.3. Inability of either the Contractor or any subcontractor to acquire or maintain any required insurance, bonds, licenses or permits.

6.4.3. If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such



## UNIFORM TERMS AND CONDITIONS

delay, as soon as is practicable and no later than the following working day, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Contract Amendment for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.

6.4.4. Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure.

6.5. Third Party Antitrust Violations. The Contractor assigns to the ACA any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of this Contract.

### 7. Warranties

7.1. Liens. The Contractor warrants that the materials supplied under this Contract are free of liens and shall remain free of liens.

7.2. Quality. Unless otherwise modified elsewhere in these terms and conditions, the Contractor warrants that, for one year after acceptance by the ACA of the materials, they shall be:

7.2.1. Of a quality to pass without objection in the trade under the Contract description;

7.2.2. Fit for the intended purposes for which the materials are used;

7.2.3. Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units;

7.2.4. Adequately contained, packaged and marked as the Contract may require; and

7.2.5. Conform to the written promises or affirmations of fact made by the Contractor.

7.3. Fitness. The Contractor warrants that any material supplied to the ACA shall fully conform to all requirements of the Contract and all representations of the Contractor, and shall be fit for all purposes and uses required by the Contract.

7.4. Inspection/Testing. The warranties set forth in subparagraphs 7.1 through 7.3 of this paragraph are not affected by inspection or testing of or payment for the materials by the ACA.

7.5. Compliance with Applicable Laws. The materials and services supplied under this Contract shall comply with all applicable Federal, state and local laws, and the Contractor shall maintain all applicable licenses and permit requirements.

## UNIFORM TERMS AND CONDITIONS

### 7.6. Survival of Rights and Obligations after Contract Expiration or Termination.

- 7.6.1. Contractor's Representations and Warranties. All representations and warranties made by the Contractor under this Contract shall survive the expiration or termination hereof. In addition, the parties hereto acknowledge that pursuant to A.R.S. § 12-510, except as provided in A.R.S. § 12-529, the ACA is not subject to or barred by any limitations of actions prescribed in A.R.S., Title 12, Chapter 5.
- 7.6.2. Purchase Orders. The Contractor shall, in accordance with all terms and conditions of the Contract, fully perform and shall be obligated to comply with all purchase orders received by the Contractor prior to the expiration or termination hereof, unless otherwise directed in writing by the ACA, including, without limitation, all purchase orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract. Contractor to stop all or any part, of the work called for by this Contract for period(s) of days indicated by the ACA after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.

## 8. **The ACA's Remedies in the Event of Default**

- 8.1. Right to Assurance. If the ACA in good faith has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing under this Contract, the ACA may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of Days specified in the demand may, at the ACA's option, be the basis for terminating the Contract under the Uniform Terms and Conditions or other rights and remedies available by law or provided by the Contract.
- 8.2. Stop Work Order.
  - 8.2.1. The ACA may, at any time, by written order to the Contractor, require the Contractor to stop all or any part, of the work called for by this Contract for period(s) of days indicated by the ACA after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.
  - 8.2.2. If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The ACA shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.
- 8.3. Non-exclusive Remedies. The rights and the remedies of the ACA under this Contract are not exclusive.

## UNIFORM TERMS AND CONDITIONS

- 8.4. Nonconforming Tender. Materials or services supplied under this Contract shall fully comply with the Contract. The delivery of materials or services or a portion of the materials or services that do not fully comply constitutes a breach of contract. On delivery of nonconforming materials or services, the ACA may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.
- 8.5. Right of Offset. The ACA shall be entitled to offset against any sums due the Contractor, any expenses or costs incurred by the ACA, or damages assessed by the ACA concerning the Contractor's non-conforming performance or failure to perform the Contract, including expenses, costs and damages described in the Uniform Terms and Conditions.

### 9. Contract Termination

- 9.1. Cancellation for Conflict of Interest. Pursuant to A.R.S. § 38-511, the ACA may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the ACA is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time. If the Contractor is a political subdivision of the ACA, it may also cancel this Contract as provided in A.R.S. § 38-511.
- 9.2. Gratuities. The ACA may, by written notice, terminate this Contract, in whole or in part, if the ACA determines that employment or a Gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of the ACA for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about Contract performance. The ACA, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the Contractor.
- 9.3. Suspension or Debarment. The ACA may, by written notice to the Contractor, immediately terminate this Contract if the ACA determines that the Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of a Contract shall attest that the Contractor is not currently suspended or debarred. If the Contractor becomes suspended or debarred, the Contractor shall immediately notify the ACA.
- 9.4. Termination for Convenience. The ACA reserves the right to terminate the Contract, in whole or in part at any time when in the best interest of the ACA, without penalty

## UNIFORM TERMS AND CONDITIONS

or recourse. Upon receipt of the written notice, the Contractor shall stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the ACA. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the ACA upon demand. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination. The cost principles and procedures provided in A.A.C. R2-7-701 shall apply.

### 9.5. Termination for Default.

9.5.1. In addition to the rights reserved in the Contract, the ACA may terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, or to make satisfactory progress in performing the Contract. The ACA shall provide written notice of the termination and the reasons for it to the Contractor.

9.5.2. Upon termination under this paragraph, all goods, materials, documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the ACA on demand.

9.5.3. The ACA may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under this Contract. The Contractor shall be liable to the ACA for any excess costs incurred by the ACA in procuring materials or services in substitution for those due from the Contractor.

### 9.6. Continuation of Performance through Termination. The Contractor shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.

## 10. **Contract Claims**

10.1. A claimant shall file a contract claim with the ACA within 180 days after the claim arises. The claim shall include the following:

1. The name, address, and telephone number of the claimant;
2. The signature of the claimant or claimant's representative;
3. Identification of the purchasing agency and the Solicitation or Contract number;
4. A detailed statement of the legal and factual grounds of the claim including copies of the relevant documents; and
5. The form and dollar amount of the relief requested.

10.2. The ACA has the authority to settle and resolve contract claims, except that the agency chief procurement officer shall receive prior written approval of the state procurement administrator for the settlement or resolution of a claim in excess of the amount prescribed in A.R.S. § 41-2535.

## UNIFORM TERMS AND CONDITIONS

- 10.3 If a claim cannot be resolved under section 10.2, above, the ACA shall, upon a written request by the claimant for a final decision, issue a written decision no more than 60 days after the request is filed. Before issuing a final decision, the ACA shall review the facts pertinent to the claim and secure any necessary assistance from legal, fiscal, and other advisors.
- 10.4 The ACA shall furnish the decision to the claimant, by certified mail, return receipt requested, or by any other method that provides evidence of receipt, with a copy to the state procurement administrator. The decision shall include:
1. A description of the claim;
  2. A reference to the pertinent Contract provision;
  3. A statement of the factual areas of agreement or disagreement;
  4. A statement of the agency chief procurement officer's decision, with supporting rationale;
  5. A paragraph which substantially states: "This is the final decision of the ACA. This decision may be appealed pursuant to Title 41, Chapter 6, Article 10 of the Arizona Revised Statutes and Arizona administrative rules adopted thereunder. If you appeal, you must file a written notice of appeal containing the information required in section 10.7 within 30 days from the date you receive this decision."
- 10.5 If the ACA fails to issue a decision within 60 days after the request is filed, the claimant may proceed as if the agency chief procurement officer had issued an adverse decision.
- 10.6 The claimant may appeal the final decision of the ACA pursuant to Title 41, Chapter 6, Article 10 of the Arizona Revised Statutes and Arizona administrative rules adopted there under within 30 days of the ACA's decision. The claimant shall also file a copy of the appeal with the ACA.
- 10.7 The claimant shall file the appeal in writing and shall include the following:
1. A copy of the decision of the ACA;
  2. A statement of the factual areas of agreement or disagreement; and
  3. The precise factual or legal error in the decision of the agency chief procurement officer from which an appeal is taken.
- 10.8 The ACA shall file a complete report on the appeal with the Office of Administrative Hearings within 14 days from the date the appeal is filed, providing a copy to the claimant at that time by certified mail, return receipt requested, or by any other method that provides evidence of receipt. The report shall include a copy of the claim, a copy of the ACA's decision, if applicable, and any other documents that are relevant to the claim.

### 11. **Arbitration**

The parties to this Contract agree to resolve all disputes arising out of or relating to this Contract through arbitration, after exhausting applicable administrative review, to the extent

## **UNIFORM TERMS AND CONDITIONS**

required by A.R.S. § 12-1518, except as may be required by other applicable statutes (Title 41).

## CITY OF FLAGSTAFF STAFF SUMMARY REPORT

**To:** The Honorable Mayor and Council  
**From:** John Saltonstall, Business Retention & Expansion Manager  
**Submitted For:** Stacey Brechler-Knaggs, Grants Manager  
**Date:** 01/30/2013  
**Meeting Date:** 02/05/2013



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### TITLE:

**Consideration and Approval of an Agreement:** Sub-Recipient Agreement with Joy Cone Company providing for Joy Cone to receive a \$100,000 grant award from the Arizona Commerce Authority for the expansion of Joy Cone Company's Flagstaff facility, subject to City oversight and contingent upon Joy Cone's compliance with the grant and related conditions.

### RECOMMENDED ACTION:

Approve Sub-Recipient Agreement with Joy Cone Company, and authorize the Mayor to execute the required documents.

### Policy Decision or Reason for Action:

The Sub-Recipient Agreement enables the City of Flagstaff to pass through Arizona Commerce Authority grant funding for economic development purposes to Joy Cone, while requiring Joy Cone to meet the grant conditions. The expansion is promised to assist in the creation of low impact, high wage manufacturing jobs. The Joy Cone project will also remove a source of emissions (an incinerator).

### Financial Impact:

The City will incur nominal costs for administrative oversight. Oversight of the grant will be performed by the City Management Services Division and Economic Vitality Division staff. There is no cost allowance for staff time in the grant.

### Connection to Council Goal:

Retain, expand, and diversify economic base.

The grant award supports the expansion of the local and regional economic base. The project funded by the grant will result in five (5) new jobs at Joy Cone Company. Joy Cone will be contributing approximately \$900,000 towards the project cost, with total project cost of approximately \$1,000,000.

This grant award also fosters environmental stewardship by reducing emissions through the decommissioning of an incinerator, and by contributing to industries that convert waste from the cone making process to commercially viable filler product for other industries.

**Has There Been Previous Council Decision on This:**

No.

**Options and Alternatives:**

1. Approve the Sub-Recipient Agreement between the City of Flagstaff and Joy Cone Company.
2. Reject the Sub-Recipient Agreement.

**Background/History:**

Joy Cone Company was originally founded as the George and Thomas Cone Company in 1918 and continues to be a family owned company to this day. Joy Cone Company acquired property at the Flagstaff Pulliam Airpark Business Center in 1996 to build their first phase. After several expansions, bringing their facility to over 200,000 square feet, Joy Cone Company is now the largest ice cream cone manufacturer in the world with total annual production exceeding two billion cones.

Currently, Joy Cone Company is experiencing growing demand that exceeds their current production capabilities. Joy Cone Company and the City of Flagstaff developed an application to the Rural Economic Development Grant Program offered by the Arizona Commerce Authority for the purpose of addressing increased production capabilities. The Arizona Commerce Authority notified the City of Flagstaff on December 11, 2012, that the project was selected to receive \$100,000 for expansion purposes. The project will decommission an incinerator which is no longer necessary for operations and expand production capabilities, as well as allow for the hiring of five (5) new employees. Joy Cone Company will match the grant amount of \$100,000 with \$900,000 of Joy Cone Company funds.

**Key Considerations:**

This project expands business operations, increases low impact, high-wage jobs and supports our base economy. This project supports environmental stewardship by decommissioning their old incinerator resulting in less energy being used for burning waste and reduced emissions related to the process. All the waste that was formerly processed through the incinerator will now be sold to other industries that are able to convert that food waste into commercial products.

**Expanded Financial Considerations:**

The City of Flagstaff Business Retention and Expansion Office requested \$100,000 from the Arizona Commerce Authority on behalf of Joy Cone Company for the project. Joy Cone Company will match the \$100,000 grant funds with \$900,000 resulting in a \$1,000,000 project.

While there is no allowance for the oversight of the project for City staff, oversight is seen as minimal. Joy Cone Company will be required to report progress to the Arizona Commerce Authority through the City of Flagstaff. City staff will receive, review, and deliver reports to the Arizona Commerce Authority. As a reimbursement program, Joy Cone Company will invoice the City for expenditures. The City will confirm expenditures and then invoice the Arizona Commerce Authority.

**Community Benefits and Considerations:**

The community derives great benefit from the continued presence and growth of a company that empowers employees, and compensates employees with a livable wage and health insurance coverage. Joy Cone Company also demonstrates environmental stewardship consistent with the values of this community by eliminating their use of an incinerator.

**Community Involvement:**



None required

**Council Action:**

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**Attachments:**    Subrecipient Agreement  
                         Exhibit A  
                         Letter

**Subrecipient Agreement  
between  
City of Flagstaff  
and  
Joy Cone Company**

This Agreement ("Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by and between the City of Flagstaff ("City"), an Arizona municipal corporation with offices at 211 West Aspen Avenue, Flagstaff, Arizona, and Joy Cone Company ("Subrecipient"), an Arizona corporation with its primary place of business at 2843 W Shamrell Boulevard, Flagstaff, Arizona. The City and Subrecipient may also be referred to as "Party" or "Parties" in this Agreement.

**RECITALS**

1. The City of Flagstaff has entered into an Grant Agreement with the Arizona Commerce Authority, a copy of which is attached as **Exhibit A**, to oversee and discharge certain funds, granted through the 2013 Rural Economic Development Grant, for the Joy Cone Company Project (the "Project").
2. Joy Cone Company has the ability and the willingness to carry out the Project in a timely manner.

**1. PURPOSE OF AGREEMENT**

The purpose of this Agreement is to specify the responsibilities and procedures for the parties.

**2. TERM OF AGREEMENT, TERMINATION AND AMENDMENTS**

This Agreement shall become effective on \_\_\_\_\_ and shall terminate on \_\_\_\_\_. The following obligations of Subrecipient will survive termination of this Agreement: Sections 5, 8, 9.1 (with respect to final report), 9.2, 10, 11, 13, 16-23 (inclusive) and 26-33 (inclusive).

**3. DESCRIPTION OF SERVICES**

The Subrecipient shall provide the services for the City as approved in the grant application titled "Joy Cone Company" and funded for up to One Hundred Thousand Dollars (\$100,000), as may have been modified by the award letter. Services shall be completed on or before \_\_\_\_\_, 2014.

**4. CITY DISBURSEMENTS TO SUBRECIPIENT**

The City shall:

- 4.1 Provide up to One Hundred Thousand Dollars (\$ 100,000) to Subrecipient for services provided under Section 3.

- 4.2 City will disburse funds to Subrecipient on a reimbursement basis only, conditioned upon receipt of proof of payment and applicable, accurate and complete reimbursement documents, as deemed necessary by the City, to be submitted by Subrecipient. Payments will be contingent upon receipt of all reporting requirements of Subrecipient under this Agreement.

## **5. FISCAL RESPONSIBILITY**

The funds disbursed by the City under this Agreement shall be used only for the project as described in Subrecipient's grant application. Any modification to quantity or scope of work must be approved in writing by City. Should the project not be completed, Subrecipient shall reimburse unspent funds provided by the City under this Agreement to the City immediately upon demand by the City. If the project is completed at a lower cost than originally budgeted, the amount reimbursed to Subrecipient shall be the amount actually spent by Subrecipient in accordance with the approved application. If any expenditure by Subrecipient under this Agreement is disallowed by an audit exemption or by the City or the State, Subrecipient shall reimburse funds for the disallowed expenditure directly to the City immediately upon demand by the City. The Subrecipient shall also abide by the General Provisions in the Grant Agreement between the Arizona Commerce Authority and the City of Flagstaff, Contract #REDG-13-003, a copy of which is attached as **Exhibit A** and incorporated in this Agreement by reference.

## **6. PROGRAMMATIC MONITORING**

The Subrecipient agrees to terms specified in A.R.S. § 35-214 and § 35-215.

- 6.1 During the term of this Agreement, Subrecipients will be monitored periodically by City staff, both programmatically and financially, to ensure that the project goals, objectives, performance requirements, timelines, milestone completion, budgets, and other related program criteria are being met. Monitoring will be accomplished through a combination of office-based reviews and onsite monitoring visits. Monitoring can involve aspects of the work involved under this contract including but not limited to the review and analysis of the financial, programmatic, performance and administrative issues relative to each program and will identify areas where technical assistance and other support may be needed. All on-site monitoring shall take place during normal business hours, upon advance written notice, on dates and at times as mutually agreed upon by the City and Subrecipient.

## **7. DEBARMENT CERTIFICATION**

Subrecipient agrees to comply with the Federal debarment and suspension regulations as outlined in the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions."

## **8. FUNDS MANAGEMENT**

Subrecipient must maintain funds received under this Agreement in separate ledger accounts and cannot mix these funds with other sources. Subrecipient must manage funds according to

applicable Federal regulations for administrative requirements, costs principles, and audits. Subrecipient must maintain adequate business systems to comply with Federal requirements. The business systems that must be maintained are: Financial Management, Procurement, Personnel, Property, and Travel. A system is adequate if it is written, followed consistently (it applies to similar items), and consistently applied (it applies to all sources of funds).

## **9. REPORTING REQUIREMENTS**

Regular reports by Subrecipient shall include:

- 9.1 Progress Reports.** Subrecipient shall provide quarterly programmatic reports to the City within five ( 5) working days of the last day of the month in which services are provided. The Subrecipient shall use the form provided by the City to submit quarterly programmatic reports. The report shall contain such information as deemed necessary by the City. If the scope of the project has been fully completed and implemented, and there will be no further updates, then the quarterly programmatic report for the quarter in which the project was completed will be sufficient as the final report. The report should be marked as final and should be inclusive of all necessary and pertinent information regarding the project as deemed necessary by the City. Quarterly programmatic reports shall be submitted to the City until the entire scope of the project is completed. Notwithstanding anything to the contrary in this Section 10, the City shall not request, and Subrecipient shall not be required to provide, any of Subrecipient's confidential or proprietary information in reports provided to the City, including without limitation, any information regarding research collaborators, research plans or any data, results or other information resulting from Subrecipient's performance of research or any other activities relating thereto.
- 9.2 Financial Reimbursements.** Subrecipient shall provide as frequently as monthly, but not less than quarterly, requests for reimbursement. Reimbursements shall be submitted with the Reimbursement Form provided by the City staff. Subrecipient shall submit a final reimbursement for expenses received and invoiced prior to the end of the termination of this Agreement no more than forty-five (45) days after the end of the Agreement. Requests for reimbursement received later than the forty-five (45) days after the Agreement termination will not be paid. The final reimbursement request as submitted shall be marked FINAL, and include a copy of the Property Control Form. All reports shall be submitted to the contact person as described in Section 29, NOTICES, of this Agreement.

## **10. ASSIGNMENT AND DELEGATION**

Subrecipient may not assign any rights under this Agreement without the express, prior written consent of the City.

## **11. AMENDMENTS**

Any change in this Agreement including but not limited to the Description of Services and budget, whether by modification or supplementation, must be accomplished by a formal Agreement amendment signed and approved by the duly authorized representatives of

Subrecipient and the City. Any such amendment shall specify: 1) an effective date; 2) any increases or decreases in the amount of Subrecipient's compensation if applicable; 3) be titled as an "Amendment," and 4) be signed by the parties identified in the preceding sentence. Subrecipient understands and agrees that no other method of communication, including any other document, correspondence, act, or oral communication by or from any person, shall be used or construed as an amendment or modification or supplementation to this Agreement.

## **12. OFFSHORE PERFORMANCE OF WORK PROHIBITED**

Due to security and identity protection concerns, all services under this Agreement shall be performed within the borders of the United States. All storage and processing of information shall be performed within the borders of the United States. This provision applies to work performed by subcontractors at all tiers.

## **13. AGREEMENT RENEWAL**

This Agreement shall not bind nor purport to bind the City for any contractual commitment in excess of the original Agreement period.

## **14. RIGHT TO ASSURANCE**

If the City in good faith has reason to believe that Subrecipient does not intend to, or is unable to perform or continue performing under this Agreement, the City may demand in writing that Subrecipient give a written assurance of intent to perform. If Subrecipient fails to provide written assurance within the number of days specified in the demand, the City at its option may terminate this Agreement.

## **15. CANCELLATION FOR CONFLICT OF INTEREST**

Pursuant to A.R.S. § 38-511, if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of City is an employee or agent of the other party in any capacity or a consultant to the other party to the Agreement with respect to the subject matter of the Agreement, this Agreement may be canceled for conflict of interest.

## **16. AVAILABILITY OF FUNDS**

Every payment obligation of the City under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligations. If the funds are not allocated and available for the continuance of this Agreement, the City may terminate this Agreement at the end of the period for which funds are available. City will provide thirty days written notice and shall pay Subrecipient for termination costs as allowable under Cost Principles (OMB Circular A-122).

## **17. FORCE MAJEURE**

If either party hereto is delayed or prevented from the performance of any act required in this Agreement by reason of acts of God, strikes, lockouts, labor disputes, civil disorder, or other causes without fault and beyond the control of the party obligated, performance of such act will

be excused for the period of the delay.

## **18. PARTIAL INVALIDITY**

Any term or provision of this Agreement that may be declared contrary to any current or future law, order, regulation, or rule, or which is otherwise invalid, shall be deemed stricken from this Agreement without impairing the validity of the remainder of this Agreement.

## **19. MEDIATION AND VENUE**

**19.1 Mediation.** If a dispute arises out of or relates to this Agreement, and if the dispute cannot be settled through negotiation within forty-five (45) days of notification of the dispute, the parties agree first to try in good faith to resolve the dispute by mediation before resorting to litigation or some other dispute resolution procedure. Mediation shall be self-administered and conducted in Flagstaff, Arizona, under the CPR Mediation Procedures established by the CPR Institute for Dispute Resolution, 366 Madison Avenue, New York, NY 10017, (212) 949-6490, [www.cpradr.org](http://www.cpradr.org), unless other procedures are agreed upon by the parties. The parties shall select one or more trained mediators acceptable to all parties. Each party agrees to bear its own costs in mediation. The parties will not be obligated to mediate if an indispensable party is unwilling to join the mediation. This Agreement does not constitute a waiver of the parties' right to initiate legal action if a dispute is not resolved through good faith negotiation or mediation, or if provisional relief is required under the Arizona or Federal Rules of Civil Procedure.

**19.2 Venue.** For purposes of any form of dispute resolution, venue shall be in Coconino County, State of Arizona, or in the District of Arizona if litigation under diversity jurisdiction is involved.

## **20. GOVERNING LAW**

This Agreement shall be governed and interpreted in accordance with the laws of the State of Arizona.

## **21. ENTIRE AGREEMENT**

This Agreement is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms in this document. This Agreement and its Exhibits constitute the entire agreement between the parties and may not be changed or added to except by a writing signed by the parties provided, however, that the City shall have the right to immediately amend this Agreement so that it complies with any new legislation, laws, ordinances, or rules affecting this Agreement. Subrecipient agrees to execute any such amendment within ten (10) business days of its receipt.

## **22. NON WAIVER**

Neither party's failure to insist on strict performance of any term or condition of the Agreement

shall be deemed a waiver of that term or condition, even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object.

### **23. RESTRICTIONS ON LOBBYING**

The Subrecipient shall not use funds made available to it under this Agreement to pay for, influence, or seek to influence any officer or employee of any governmental entity.

### **24. LICENSING**

The Subrecipient, unless otherwise exempted by law, shall obtain and maintain all licenses, permits, and authority necessary to perform those acts it is obligated to perform under this Agreement.

### **25. NON-DISCRIMINATION**

Subrecipient shall comply with all State and Federal equal opportunity and non-discrimination requirements and conditions of employment, including the Americans with Disabilities Act, in accordance with A.R.S. title 41, Chapter 9, Article 4 and Executive Order 2009-09.

### **26. SECTARIAN REQUESTS**

Funds disbursed pursuant to this Agreement may not be expended for any sectarian purpose or activity, including sectarian worship or instruction in violation of the United States or Arizona Constitutions.

### **27. ADVERTISING AND PROMOTION OF AGREEMENT**

The Subrecipient shall not advertise or publish information for commercial benefit concerning this Agreement without the prior written approval of the City.

### **28. OWNERSHIP OF INFORMATION, PRINTED AND PUBLISHED MATERIAL**

The Funding Agency and the City shall have full and complete rights to reproduce, duplicate, disclose, perform, and otherwise use all report provided to the City under this Agreement in accordance with Section 10 above.

28.1 The Subrecipient agrees that any report furnished to City pursuant to Section 10 herein shall contain the following statement:

"This document was prepared under a grant from the Arizona Commerce Authority, Rural Economic Development Grant. Points of view or opinions expressed in this document are those of the authors and do not necessarily represent the official position or policies of the Arizona Commerce Authority."

28.2 The Subrecipient also agrees that one copy of any such report shall be submitted to the City to be placed on file and distributed as appropriate to other potential sub-recipients or interested parties. The City may waive the requirement for submission of any specific

publication upon submission of a request providing justification from Subrecipient.

- 28.3 The City and Subrecipient recognize that activities funded under this Agreement have the potential to become public information. It is also agreed that any report or printed matter provided pursuant to Section 10 of this Agreement is a work for hire and shall not be copyrighted by Subrecipient.

## **29. INDEMNIFICATION**

To the extent permitted by law, each party (as Indemnitor) agrees to indemnify, defend and hold harmless the other party (as Indemnitee) from and against any and all claims, losses, liability, costs, or expenses, including reasonable attorney's fees, (collectively referred to as "Claims") arising out of bodily injury of any person, including death, or property damage, but only to the extent that such claims which result in vicarious/derivative liability to the Indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents or employees.

## **30. TERMINATION**

Either party reserves the right to terminate the Agreement in whole or in part due to the failure of the other party to comply with any term or condition of the Agreement, to acquire and maintain all required insurance policies, bonds, licenses and permits or to make satisfactory progress in performing the Agreement. The staff of either party shall provide a written thirty (30) day advance notice of the termination and the reasons for it.

- 30.1 If Subrecipient chooses to terminate the Agreement before the grant purposes have been met then the City reserves the right to collect all reimbursements distributed to Subrecipient that have not been spent and that Subrecipient is not contractually obligated to pay to any third party as of the date Subrecipient receives notice of said termination.

- 30.3 The Subrecipient shall continue to perform, in accordance with the requirements of the Agreement, up to the date of termination, as directed in the termination notice.

## **31. PARAGRAPH HEADINGS**

The paragraph headings in this Agreement are for convenience of reference only and do not define, limit, enlarge, or otherwise affect the scope, construction, or interpretation of this Agreement or any of its provisions.

## **32. SPECIAL CONDITIONS**

- 32.1 The Subrecipient agrees that, when practicable, any equipment purchased with grant funding shall be prominently marked as follows: **"Purchased with funds provided by the Arizona Commerce Authority, Rural Economic Development Grant."**

- 32.2 The Subrecipient agrees to cooperate with any assessments, state/national evaluation efforts, or information or data collection requests, including, but not limited to, the provision of any information required for the assessment or evaluation of any activities within this agreement.



### 33. NOTICES

Any and all notices, requests, demands, or communications by either party to this Agreement, pursuant to or in connection with this Agreement shall be in writing be delivered in person or shall be sent to the respective parties at the following addresses:

To City:

Grants Manager  
City of Flagstaff  
211 West Aspen  
Flagstaff, AZ 86001

To Subrecipient:

Joe Pozar, Jr.  
Joy Cone Company  
2843 W Shamrell Boulevard  
Flagstaff, AZ 86001

**IN WITNESS WHEREOF** the parties have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

**City of Flagstaff**

**Joy Cone Company**

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Kevin Burke, City Manager

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David F. George, President/CEO

Attest:

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City Clerk

Approved as to form:

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City Attorney

Attachments:      Exhibit A  
                         Joy Cone letter, RE: Application of Funds



**Arizona Commerce Authority**  
**GRANT AGREEMENT**  
**2013 Rural Economic Development Grant**  
**Award REDG 13-003**

**Arizona Commerce Authority**  
**333 North Central Avenue**  
**Suite 1900**  
**Phoenix, Arizona 85004**  
**(602) 845-1200**

City of Flagstaff	For clarification of this offer, contact:	
(Grantee Name)	Name:	John Saltonstall (Business Retention & Expansion Manager) or Stacey Brechler-Knaggs (Grants Manager)
211 W. Aspen Avenue,	Telephone No. & Email	928-213-2966 <a href="mailto:jsaltonstall@flagstaffaz.gov">jsaltonstall@flagstaffaz.gov</a> 928-213-2227 <a href="mailto:sknaggs@flagstaffaz.gov">sknaggs@flagstaffaz.gov</a>
Flagstaff, AZ 86001		
86-6000244		
Federal Employer Identification Number or SSN	Signature of Person Authorized to Sign Offer	Date
088302625	Kevin Burke, City Manager	
DUNS #	Printed Name and Title	

- 1. Award.** Grantee is hereby awarded a grant in the amount of \$100,000 (the "Grant") under the ACA Rural Economic Development Grant Program (the "Program") for Grantee's proposal for the Project Recipe for Growth (the "Project," as summarized in the attached Project Summaries section) included in Grantee's proposal dated October 2012 (the "Proposal"). (See attached Awards section for details regarding award amounts and approved uses of Grant funds.)
- 2. Project Implementation.** Grantee's receipt of Grant funds and Grantee's distribution of Grant funds to the Projects shall be conditioned upon the Projects being implemented substantially in conformance with the descriptions of the Projects in the Proposal. Grantee shall be responsible for monitoring the progress of the Projects and managing Grant funds accordingly (which may include distributing, withholding or returning Grant funds, as applicable).
- 3. Grant Documents.** This Grant Agreement incorporates and includes the terms and conditions of both the 2013 Rural Economic Development Grant Program Summary ("Summary") and Grantee's Proposal. Wherever there is a conflict among any two or three of (i) this document, (ii) the Proposal and (iii) the Summary, this document shall prevail over the Summary and the Proposal and the Summary shall prevail over the Proposal.
- 4. Term.** The term of the Grant is one year from the execution of this Agreement. No extensions will be provided and reimbursements will be made only for work completed during the term of the Grant.
- 5. Scrutinized Business Operations.** In Accordance with A.R.S. §35-391, *et seq.*, and A.R.S. §35-393, *et seq.*, the Grantee hereby certifies that the Grantee does not have scrutinized business operations in Iran or Sudan.
- 6. Discrimination.** The Grantee shall not discriminate against any employee or contractor for employment in violation of Federal Executive Order 11246, State Executive Order 99-4 or A.R.S. §§ 41-1461 through 1465.
- 7. Compliance with the law; E-Verify.** Grantee warrants compliance with all federal immigration laws and regulations relating to employee and warrants compliance with A.R.S. § 23-214. A breach of grantee's warranty regarding compliance with immigration laws and regulations shall be deemed a material breach of this Agreement and the Authority, in such event, may terminate this Agreement.
- 8. Equipment.** Before making any reimbursements for equipment with Grant funds, Grantee will require the owner of the equipment to sign the Arizona Commerce Authority "Equipment Certification" document.
- 9. Cooperation with the Authority.** Awardee authorizes and gives full consent to the Authority to copyright, publish, reproduce, promote or otherwise use its appearance, company brand, company images, testimonials and any other pertinent information in any manner, in any format or for any promotional/advertising purpose, including without limitation for public exhibits, displays, publications, art, website and advertising.
- 10.** This Agreement is subject to the attached ACA Uniform Terms and Conditions.



Arizona Commerce Authority

**GRANT AGREEMENT**

**2013 Rural Economic Development Grant**

**Award REDG 13-003**

**Arizona Commerce Authority**

**333 North Central Avenue**

**Suite 1900**

**Phoenix, Arizona 85004**

**(602) 845-1200**

**11. By signing above, Grantee agrees to the foregoing terms and conditions.**

This Agreement shall henceforth be referred to as Grant Agreement REDG-13-003.

\_\_\_\_\_  
Sandra Watson, President & CEO

\_\_\_\_\_  
Date

**Grant Agency: Arizona Commerce Authority**  
**Project Title: 2013 Rural Economic Development Grant**  
**Grant Number: REDG 13-003**

Attest:

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City Clerk

Approved as to Form:

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City Attorney

## PROJECT SUMMARIES

<b>Project Name:</b>	Project Recipe for Growth
<b>Brief Project Description:</b>	Joy Cone Company's Flagstaff facility will decommission their existing incinerator, providing space to design and build a second batter room.
<b>Grant Amount Requested:</b>	\$100,000
<b>Projected Outcomes</b>	
<b>Number of new jobs:</b>	5 by end of 2013
<b>Average Wages:</b>	\$45,000
<b>New Payroll:</b>	\$225,000
<b>Capital Investment:</b>	\$1,000,000

## AWARD

**Project: Project Recipe for Growth**

Company: Joy Cone Company

Amount Awarded: \$100,000

Authorized expenses: As set forth in the following chart.

Uses of Funding	Amount
Decommissioning of Incinerator	\$ 50,000
Architectural and Structural Engineering	\$100,000
System Design and Process Engineering	\$150,000
Construction/Conversion	\$240,000
System Installation and Commission	\$460,000
<b>TOTAL</b>	<b>\$1,000,000</b>

**Invoices**

Once a portion or the entire project is completed, grantees will send an invoice to the ACA grant manager for reimbursement of approved costs actually incurred to date. Invoices must include backup documentation, including copies of all invoices submitted from subcontractors or other sources to the grantee for work done on the project. Invoices are to be submitted only ONCE a month and with the required progress report.

# UNIFORM TERMS AND CONDITIONS

## ARIZONA COMMERCE AUTHORITY (ACA) UNIFORM TERMS AND CONDITIONS

### 1. Definition of Terms

As used in this Solicitation and any resulting Contract, the terms listed below are defined as follows:

- 1.1. *"ACA"* means the Arizona Commerce Authority.
- 1.2. *"ACA Fiscal Year"* means the period beginning with July 1 and ending June 30.
- 1.3. *"Attachment"* means any item a Solicitation requires an Offeror to submit as part of an Offer.
- 1.4. *"Contract"* means the combination of the Solicitation, including the Uniform and Special Instructions to Offerors, the Uniform and Special Terms and Conditions, and the Specifications and Statement or Scope of Work; the Offer and any Best and Final Offers; and any Solicitation Amendments or Contract Amendments.
- 1.5. *"Contract Amendment"* means a written document signed by the parties that is issued for the purpose of making changes in the Contract.
- 1.6. *"Contractor"* means any person who has a Contract with the Arizona Commerce Authority (ACA).
- 1.7. *"Days"* means calendar days unless otherwise specified.
- 1.8. *"Exhibit"* means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.
- 1.9. *"Gratuity"* means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.
- 1.10. *"Materials"* means all property, including equipment, supplies, printing, insurance and leases of property but does not include land, a permanent interest in land or real property or leasing space.
- 1.11. *"Offer"* means an offer to provide the goods and/or services specified in a Solicitation, such as a bid, Proposal or quotation.
- 1.12. *"Offeror"* means a vendor who submits an Offer to the ACA.
- 1.13. *"Services"* means the furnishing of labor, time or effort by a Contractor or subcontractor which does not involve the delivery of a specific end product other than required reports and performance, but does not include employment agreements or collective bargaining agreements.
- 1.14. *"Solicitation"* means an Invitation for Bids ("IFB"), a Request for Proposals ("RFP"), or a Request for Quotations ("RFQ").
- 1.15. *"Solicitation Amendment"* means a written document that is signed by the ACA and issued for the purpose of making changes to the Solicitation.

## UNIFORM TERMS AND CONDITIONS

- 1.16. *"Subcontract"* means any Contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or any service required for the performance of the Contract.

### 2. Contract Interpretation

- 2.1. Arizona Law. Arizona law applies to this Contract including, where applicable, the Uniform Commercial Code as adopted by the ACA of Arizona. (Please note: The ACA is exempt from Title 41, Chapter 23 of the Arizona Revised Statutes (the Procurement Code)).
- 2.2. Implied Contract Terms. Each provision of law and any terms required by law to be in this Contract are a part of this Contract as if fully stated in it.
- 2.3. Contract Order of Precedence. In the event of a conflict in the provisions of the Contract, as accepted by the ACA and as they may be amended, the following shall prevail in the order set forth below:
- 2.3.1. Special Terms and Conditions;
  - 2.3.2. Uniform Terms and Conditions;
  - 2.3.3. Statement or Scope of Work;
  - 2.3.4. Specifications;
  - 2.3.5. Attachments;
  - 2.3.6. Exhibits;
  - 2.3.7. Documents referenced or included in the Solicitation.
  - 2.3.8. Offer.
- 2.4. Relationship of Parties. The Contractor under this Contract is an independent Contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.
- 2.5. Severability. The provisions of this Contract are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Contract.
- 2.6. No Parole Evidence. This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.
- 2.7. No Waiver. Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

### 3. Contract Administration and Operation

- 3.1. Records. Under A.R.S. § 35-214 and § 35-215, the Contractor shall retain and shall contractually require each subcontractor to retain all data and other "records"



## UNIFORM TERMS AND CONDITIONS

relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract. All records shall be subject to inspection and audit by the ACA at reasonable times. Upon request, the Contractor shall produce a legible copy of any or all such records.

- 3.2. Non-Discrimination. The Contractor shall comply with ACA Executive Order No. 2009-09 and all other applicable Federal and ACA laws, rules and regulations, including the Americans with Disabilities Act.
- 3.3. Audit. Pursuant to ARS § 35-214, at any time during the term of this Contract and five (5) years thereafter, the Contractor's or any subcontractor's books and records shall be subject to audit by the ACA and, where applicable, the Federal Government, to the extent that the books and records relate to the performance of the Contract or Subcontract.
- 3.4. Facilities Inspection and Materials Testing. The Contractor agrees to permit access to its facilities, subcontractor facilities and the Contractor's processes or services, at reasonable times for inspection of the facilities or materials covered under this Contract. The ACA shall also have the right to test, at its own cost, the materials to be supplied under this Contract. Neither inspection of the Contractor's facilities nor materials testing shall constitute final acceptance of the materials or services. If the ACA determines non-compliance of the materials, the Contractor shall be responsible for the payment of all costs incurred by the ACA for testing and inspection.
- 3.5. Notices. Notices to the Contractor required by this Contract shall be made by the ACA to the person designated in the Contract to receive notices or, if no one is designated to receive notices, the person named as the primary contact. Unless otherwise stated in the Contract, notices to the ACA required by the Contract shall be made by the Contractor to the ACA's Procurement Manager. An authorized ACA signer and an authorized Contractor representative may change their respective person to whom notice shall be given by written notice to the other and an amendment to the Contract shall not be necessary.
- 3.6. Advertising, Publishing and Promotion of Contract. The Contractor shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the ACA.
- 3.7. Ownership of Intellectual Property. This contract does not authorize the ownership by or transfer to the ACA any of Contractor's intellectual property.
- 3.8. Federal Immigration and Nationality Act. The Contractor shall comply with all federal, state and local immigration laws and regulations relating to the immigration status of their employees during the term of the Contract. Further, the Contractor shall flow down this requirement to all subcontractors utilized during the term of the Contract. The ACA shall retain the right to perform random audits of Contractor and subcontractor records or to inspect papers of any employee thereof to ensure compliance. Should the ACA determine that the Contractor and/or any subcontractors be found noncompliant, the ACA may pursue all remedies allowed by law, including, but not limited to; suspension of work, termination of the Contract for

## UNIFORM TERMS AND CONDITIONS

default and suspension and/or debarment of the Contractor.

- 3.9 E-Verify Requirements. In accordance with A.R.S. § 41-4401, Contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section A.R.S. § 23-214, Subsection A.
- 3.10 Scrutinized Businesses. In accordance with A.R.S. § 35-391 and A.R.S. § 35-393, Contractor certifies that the Contractor does not have scrutinized business operations in Sudan or Iran.
- 3.11 Offshore Performance of Work Prohibited.

Any services that are described in the specifications or scope of work that directly serve the ACA of Arizona or its clients and involve access to secure or sensitive data or personal client data shall be performed within the defined territories of the United States. Unless specifically stated otherwise in the specifications, this paragraph does not apply to indirect or 'overhead' services, redundant back-up services or services that are incidental to the performance of the Contract. This provision applies to work performed by subcontractors at all tiers.

#### 4. Costs and Payments

- 4.1. Payments. Payments shall comply with the requirements of A.R.S. Titles 35 and 41, Net 30 days. Upon receipt and acceptance of goods or services, the Contractor shall submit a complete and accurate invoice for payment from the ACA within thirty (30) days.
- 4.2. Delivery. Unless stated otherwise in the Contract, all prices shall be F.O.B. Destination and shall include all freight delivery and unloading at the destination.
- 4.3. Applicable Taxes.
  - 4.3.1. Payment of Taxes. The Contractor shall be responsible for paying all applicable taxes.
  - 4.3.2. State and Local Transaction Privilege Taxes. The ACA is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure to collect such taxes from the buyer does not relieve the seller from its obligation to remit taxes.
  - 4.3.3. Tax Indemnification. Contractor and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall, and require all subcontractors to hold the ACA harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.
  - 4.3.4. IRS W9 Form. In order to receive payment the Contractor shall have a current

I.R.S. W9 Form on file with the ACA of Arizona, unless not required by law.

## UNIFORM TERMS AND CONDITIONS

- 4.4. Availability of Funds for the Next ACA fiscal year. Funds may not presently be available for performance under this Contract beyond the current state fiscal year. No legal liability on the part of the ACA for any payment may arise under this Contract beyond the current state fiscal year until funds are made available for performance of this Contract.
- 4.5. Availability of Funds for the current ACA fiscal year. Should the Arizona State Legislature enter back into session and reduce the appropriations or for any reason and these goods or services are not funded, the ACA may take any of the following actions:
- 4.5.1. Accept a decrease in price offered by the Contractor;
- 4.5.2. Cancel the Contract; or
- 4.5.3. Cancel the Contract and re-solicit the requirements.

### 5. Contract Changes

- 5.1. Amendments. The Contract may be modified only through a written Contract Amendment signed by the parties. Changes to the Contract, including without limitation the addition of work or materials, the revision of payment terms, or the substitution of work or materials, purported to be made by a person who is not specifically authorized by the ACA to execute the Contract Amendment shall be void and without effect, and the Contractor shall not be entitled to any claim under this Contract based on those changes.
- 5.2. Subcontracts. The Contractor shall not enter into any Subcontract under this Contract for the performance of this Contract without the advance written approval of the ACA. The Contractor shall clearly list any proposed subcontractors and the subcontractor's proposed responsibilities. The Subcontract shall incorporate by reference the terms and conditions of this Contract.
- 5.3. Assignment and Delegation. The Contractor shall not assign any right nor delegate any duty under this Contract without the prior written approval of the ACA. The ACA shall not unreasonably withhold approval.

### 6. Risk and Liability

- 6.1. Risk of Loss: The Contractor shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with the Contractor regardless of receipt.
- 6.2. Indemnification
- 6.2.1. Contractor Indemnification (Not Public Agency) The parties to this Contract agree that the ACA, the State of Arizona, its departments, agencies, boards and commissions shall be indemnified and held harmless by the Contractor for the vicarious liability of the ACA as a result of entering into this Contract. However, the parties further agree that the ACA, the State of Arizona, its departments, agencies, boards and commissions shall be responsible for its

## UNIFORM TERMS AND CONDITIONS

own negligence. Each party to this Contract is responsible for its own negligence.

6.2.2. Public Agency Language Only Each party (as 'Indemnitor') agrees to indemnify, defend, and hold harmless the other party (as 'Indemnitee') from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as 'Claims') arising out of bodily injury of any person (including death) or property damage but only to the extent that such Claims which result in vicarious/derivative liability to the Indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers.

6.3. Indemnification - Patent and Copyright. The Contractor shall indemnify and hold harmless the ACA against any liability, including costs and expenses, for infringement of any patent, trademark or copyright arising out of Contract performance or use by the ACA of materials furnished or work performed under this Contract. The ACA shall reasonably notify the Contractor of any claim for which it may be liable under this paragraph. If the Contractor is insured pursuant to A.R.S. § 41-621 and § 35-154, this section shall not apply.

6.4. Force Majeure.

6.4.1 Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term "*force majeure*" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions- intervention-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.

6.4.2. Force majeure shall not include the following occurrences:

6.4.2.1. Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market;

6.4.2.2. Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition; or

6.4.2.3. Inability of either the Contractor or any subcontractor to acquire or maintain any required insurance, bonds, licenses or permits.

6.4.3. If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such

## UNIFORM TERMS AND CONDITIONS

delay, as soon as is practicable and no later than the following working day, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Contract Amendment for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.

6.4.4. Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure.

6.5. Third Party Antitrust Violations. The Contractor assigns to the ACA any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of this Contract.

### 7. Warranties

7.1. Liens. The Contractor warrants that the materials supplied under this Contract are free of liens and shall remain free of liens.

7.2. Quality. Unless otherwise modified elsewhere in these terms and conditions, the Contractor warrants that, for one year after acceptance by the ACA of the materials, they shall be:

7.2.1. Of a quality to pass without objection in the trade under the Contract description;

7.2.2. Fit for the intended purposes for which the materials are used;

7.2.3. Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units;

7.2.4. Adequately contained, packaged and marked as the Contract may require; and

7.2.5. Conform to the written promises or affirmations of fact made by the Contractor.

7.3. Fitness. The Contractor warrants that any material supplied to the ACA shall fully conform to all requirements of the Contract and all representations of the Contractor, and shall be fit for all purposes and uses required by the Contract.

7.4. Inspection/Testing. The warranties set forth in subparagraphs 7.1 through 7.3 of this paragraph are not affected by inspection or testing of or payment for the materials by the ACA.

7.5. Compliance with Applicable Laws. The materials and services supplied under this Contract shall comply with all applicable Federal, state and local laws, and the Contractor shall maintain all applicable licenses and permit requirements.

## UNIFORM TERMS AND CONDITIONS

### 7.6. Survival of Rights and Obligations after Contract Expiration or Termination.

- 7.6.1. Contractor's Representations and Warranties. All representations and warranties made by the Contractor under this Contract shall survive the expiration or termination hereof. In addition, the parties hereto acknowledge that pursuant to A.R.S. § 12-510, except as provided in A.R.S. § 12-529, the ACA is not subject to or barred by any limitations of actions prescribed in A.R.S., Title 12, Chapter 5.
- 7.6.2. Purchase Orders. The Contractor shall, in accordance with all terms and conditions of the Contract, fully perform and shall be obligated to comply with all purchase orders received by the Contractor prior to the expiration or termination hereof, unless otherwise directed in writing by the ACA, including, without limitation, all purchase orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract. Contractor to stop all or any part, of the work called for by this Contract for period(s) of days indicated by the ACA after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.

### 8. **The ACA's Remedies in the Event of Default**

- 8.1. Right to Assurance. If the ACA in good faith has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing under this Contract, the ACA may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of Days specified in the demand may, at the ACA's option, be the basis for terminating the Contract under the Uniform Terms and Conditions or other rights and remedies available by law or provided by the Contract.
- 8.2. Stop Work Order.
  - 8.2.1. The ACA may, at any time, by written order to the Contractor, require the Contractor to stop all or any part, of the work called for by this Contract for period(s) of days indicated by the ACA after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.
  - 8.2.2. If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The ACA shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.
- 8.3. Non-exclusive Remedies. The rights and the remedies of the ACA under this Contract are not exclusive.

## UNIFORM TERMS AND CONDITIONS

- 8.4. Nonconforming Tender. Materials or services supplied under this Contract shall fully comply with the Contract. The delivery of materials or services or a portion of the materials or services that do not fully comply constitutes a breach of contract. On delivery of nonconforming materials or services, the ACA may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.
- 8.5. Right of Offset. The ACA shall be entitled to offset against any sums due the Contractor, any expenses or costs incurred by the ACA, or damages assessed by the ACA concerning the Contractor's non-conforming performance or failure to perform the Contract, including expenses, costs and damages described in the Uniform Terms and Conditions.

### 9. Contract Termination

- 9.1. Cancellation for Conflict of Interest. Pursuant to A.R.S. § 38-511, the ACA may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the ACA is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time. If the Contractor is a political subdivision of the ACA, it may also cancel this Contract as provided in A.R.S. § 38-511.
- 9.2. Gratuities. The ACA may, by written notice, terminate this Contract, in whole or in part, if the ACA determines that employment or a Gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of the ACA for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about Contract performance. The ACA, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the Contractor.
- 9.3. Suspension or Debarment. The ACA may, by written notice to the Contractor, immediately terminate this Contract if the ACA determines that the Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of a Contract shall attest that the Contractor is not currently suspended or debarred. If the Contractor becomes suspended or debarred, the Contractor shall immediately notify the ACA.
- 9.4. Termination for Convenience. The ACA reserves the right to terminate the Contract, in whole or in part at any time when in the best interest of the ACA, without penalty

## UNIFORM TERMS AND CONDITIONS

or recourse. Upon receipt of the written notice, the Contractor shall stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the ACA. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the ACA upon demand. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination. The cost principles and procedures provided in A.A.C. R2-7-701 shall apply.

### 9.5. Termination for Default.

9.5.1. In addition to the rights reserved in the Contract, the ACA may terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, or to make satisfactory progress in performing the Contract. The ACA shall provide written notice of the termination and the reasons for it to the Contractor.

9.5.2. Upon termination under this paragraph, all goods, materials, documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the ACA on demand.

9.5.3. The ACA may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under this Contract. The Contractor shall be liable to the ACA for any excess costs incurred by the ACA in procuring materials or services in substitution for those due from the Contractor.

### 9.6. Continuation of Performance through Termination. The Contractor shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.

## 10. **Contract Claims**

10.1. A claimant shall file a contract claim with the ACA within 180 days after the claim arises. The claim shall include the following:

1. The name, address, and telephone number of the claimant;
2. The signature of the claimant or claimant's representative;
3. Identification of the purchasing agency and the Solicitation or Contract number;
4. A detailed statement of the legal and factual grounds of the claim including copies of the relevant documents; and
5. The form and dollar amount of the relief requested.

10.2. The ACA has the authority to settle and resolve contract claims, except that the agency chief procurement officer shall receive prior written approval of the state procurement administrator for the settlement or resolution of a claim in excess of the amount prescribed in A.R.S. § 41-2535.



## UNIFORM TERMS AND CONDITIONS

- 10.3 If a claim cannot be resolved under section 10.2, above, the ACA shall, upon a written request by the claimant for a final decision, issue a written decision no more than 60 days after the request is filed. Before issuing a final decision, the ACA shall review the facts pertinent to the claim and secure any necessary assistance from legal, fiscal, and other advisors.
- 10.4 The ACA shall furnish the decision to the claimant, by certified mail, return receipt requested, or by any other method that provides evidence of receipt, with a copy to the state procurement administrator. The decision shall include:
1. A description of the claim;
  2. A reference to the pertinent Contract provision;
  3. A statement of the factual areas of agreement or disagreement;
  4. A statement of the agency chief procurement officer's decision, with supporting rationale;
  5. A paragraph which substantially states: "This is the final decision of the ACA. This decision may be appealed pursuant to Title 41, Chapter 6, Article 10 of the Arizona Revised Statutes and Arizona administrative rules adopted thereunder. If you appeal, you must file a written notice of appeal containing the information required in section 10.7 within 30 days from the date you receive this decision."
- 10.5 If the ACA fails to issue a decision within 60 days after the request is filed, the claimant may proceed as if the agency chief procurement officer had issued an adverse decision.
- 10.6 The claimant may appeal the final decision of the ACA pursuant to Title 41, Chapter 6, Article 10 of the Arizona Revised Statutes and Arizona administrative rules adopted there under within 30 days of the ACA's decision. The claimant shall also file a copy of the appeal with the ACA.
- 10.7 The claimant shall file the appeal in writing and shall include the following:
1. A copy of the decision of the ACA;
  2. A statement of the factual areas of agreement or disagreement; and
  3. The precise factual or legal error in the decision of the agency chief procurement officer from which an appeal is taken.
- 10.8 The ACA shall file a complete report on the appeal with the Office of Administrative Hearings within 14 days from the date the appeal is filed, providing a copy to the claimant at that time by certified mail, return receipt requested, or by any other method that provides evidence of receipt. The report shall include a copy of the claim, a copy of the ACA's decision, if applicable, and any other documents that are relevant to the claim.

### 11. **Arbitration**

The parties to this Contract agree to resolve all disputes arising out of or relating to this Contract through arbitration, after exhausting applicable administrative review, to the extent

## **UNIFORM TERMS AND CONDITIONS**

required by A.R.S. § 12-1518, except as may be required by other applicable statutes (Title 41).



December 18, 2012

City of Flagstaff  
211 W. Aspen Avenue  
Flagstaff AZ, 86001

Dear City of Flagstaff,

We at Joy Cone Company are extremely thankful for the hard work and dedication received from the City of Flagstaff during their partnership for the Arizona Commerce Authority (ACA) Rural Economic Development Grant Program. I would personally like to thank you for notifying me that Joy Cone Co. has been awarded a grant of \$100,000 from the (ACA) for 2013. These funds will help with an important expansion here at Joy Cone Co. Our intended use for these funds is listed below:

Decommissioning our Incinerator	\$50,000
Architectural and Structural Engineering	\$100,000
System Design and Process Engineering	\$150,000

These are the first three steps to the expansion. In compliance with your requirements, we will complete regular documentation and updates on this expansion.

Thank you again for your highly valuable support.

Sincerely,

Joe Pozar Jr.  
Plant Manager



2843 West Shamrell Boulevard • Flagstaff, AZ 86001-9414

Phone: 928-774-0225  
Fax: 928-774-0229  
www.joycone.com



SINCE 1918

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211 W. Aspen Avenue  
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Thank you again for your highly valuable support.

Sincerely,

A handwritten signature in black ink, appearing to read "Joe Pozar Jr.".

Joe Pozar Jr.  
Plant Manager

**CITY OF FLAGSTAFF**  
**STAFF SUMMARY REPORT**

**To:** The Honorable Mayor and Council  
**From:** Jerene Watson, Deputy City Manager  
**Date:** 01/31/2013  
**Meeting Date:** 02/05/2013



---

**TITLE:**

**Consideration of Resolution No. 2013-03:** A resolution of the Council of the City of Flagstaff, Arizona, supporting House Bill 2498, Property Tax Levy; Community Colleges (as requested by Coconino Community College for support of an amendment to state law via HB2498, permissive language allowing community college districts to ask voters for an increase to their primary property tax levy limit base after 20 years, but no more than 35 years, from the date they set their initial levy).

**RECOMMENDED ACTION:**

- Should the Council wish to support HB2498:
- 1) Read Resolution No. 2013-03 by title only.
  - 2) Adopt Resolution No. 2013-03.

**Policy Decision or Reason for Action:**

This is a request by Coconino Community College for support of an amendment to state law via HB2498 providing permissive language to allow community college districts to ask voters for an increase to their primary property tax levy limit base after 20 years, but no more than 35 years, from the date they set their initial levy. If enacted, this bill would allow Coconino Community College (CCC) legislative authorization to approach voters of Coconino County to determine whether they want to reset their primary property tax levy limit base. This opens an opportunity for our community college partner to seek voter approval in their property tax rate that drives the revenue to operate the educational system for citizens in Flagstaff and beyond.

**Financial Impact:**

There would be no direct impact on the City of Flagstaff.

**Connection to Council Goal:**

Indirectly supports the Council goal to "retain, expand and diversify economic base." This legislative effort creates the opportunity for a decision-point by voters on raising revenues for higher education provided by our community college. Our support of the opportunity indirectly assists in workforce development and training of our residents.

**Previous Council Decision on This:**

No

### Options and Alternatives:

(1) Adopt Resolution No. 2013-03; (2) Not adopt a resolution in support HB2498.

### Background/History:

When the original primary property tax base was set almost 20 years ago, the long term impact of the adopted rate was not known. The Arizona Community College Presidents' Council (ACCP), a statewide organization of the ten accredited community college districts across the state supports this and has been trying to get legislation passed that would assist in correcting the situation for several years.

This bill has been introduced by state legislative District 6 Representative Bob Thorpe and is co-sponsored by Rep. Barton and Sen. Crandell.

### Key Considerations:

CCC currently has the lowest primary property tax revenue of any of the state's community colleges, the lowest percentage of property tax contribution to total revenue and highest tuition and fees of any of the accredited college districts. They have determined it is not a financially sustainable status and the college believes it places at risk its current mission and ability to provide the high quality academic and workforce programs the residents of our county need.

### Community Benefits and Considerations:

It will assist the community college in providing the academic resources necessary to prepare residents of Flagstaff and individuals in the region for careers and intellectual enrichment.

**Community Involvement:**

NA

### Expanded Options and Alternatives:

(1) Adopt Resolution No. 2013-03 to support HB2498, allowing voters to consider an increase in the property-tax levy base for community colleges.

(2) Not adopt a resolution in support HB2498 which allows an increase in the property-tax levy base for community colleges if approved by voters.

**Council Action:**

**Attachments:** [HB2498 Legislative bill: community college property tax levy](#)  
[Resolution No. 2013-03](#)

REFERENCE TITLE: property tax levy; community colleges

State of Arizona  
House of Representatives  
Fifty-first Legislature  
First Regular Session  
2013

# HB 2498

Introduced by  
Representatives Thorpe, Barton, Senator Crandell

AN ACT

AMENDING SECTION 42-17056, ARIZONA REVISED STATUTES; RELATING TO PROPERTY TAX  
LEVY LIMITS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 42-17056, Arizona Revised Statutes, is amended to  
3 read:

4 42-17056. Initial base levy limit if no primary property taxes  
5 were levied in the preceding tax year

6 A. If a county, city, town or community college district did not levy  
7 primary property taxes in the preceding tax year, the governing body shall  
8 submit a proposed amount to be raised by primary property taxes for approval  
9 of the voters.

10 B. The election shall be held on the third Tuesday in May before the  
11 beginning of the fiscal year in as nearly as practicable the same manner as  
12 prescribed by title 35, chapter 3, article 3. The ballot shall state that if  
13 the amount is approved by the voters, it will be the base for determining  
14 levy limitations for the county, city, town or district for subsequent fiscal  
15 years.

16 C. If a majority of the qualified electors voting approve the proposed  
17 levy amount for primary property taxes, the levy applicable for the county,  
18 city, town or district for the next fiscal year shall be an amount not  
19 exceeding the approved amount.

20 D. On acceptance by the voters, the governing body shall send a copy  
21 of the approved resolution to the property tax oversight commission.

22 E. If the proposed levy amount is not approved, the county, city, town  
23 or community college district shall not levy a primary property tax for that  
24 year.

25 F. A COMMUNITY COLLEGE DISTRICT WITH A PRIMARY PROPERTY TAX LEVY  
26 INITIALLY ESTABLISHED PURSUANT TO THIS SECTION MAY RESUBMIT A PROPOSED AMOUNT  
27 TO BE RAISED BY PRIMARY PROPERTY TAXES FOR APPROVAL BY THE VOTERS, AT LEAST  
28 TWENTY BUT NOT MORE THAN THIRTY-FIVE YEARS AFTER THE DATE OF INITIAL APPROVAL  
29 PURSUANT TO SUBSECTION A OF THIS SECTION, IF THE PROPOSED AMOUNT IS NOT MORE  
30 THAN TWO TIMES THE OTHERWISE AUTHORIZED LEVY AMOUNT FOR THE SAME YEAR. THE  
31 ELECTION SHALL BE CONDUCTED PURSUANT TO SUBSECTION B OF THIS SECTION. IF A  
32 MAJORITY OF THE QUALIFIED ELECTORS VOTING:

33 1. APPROVE THE PROPOSED LEVY AMOUNT, THE LEVY APPLICABLE FOR THE  
34 DISTRICT FOR THE NEXT TAX YEAR SHALL NOT EXCEED THE APPROVED AMOUNT.

35 2. DISAPPROVE THE PROPOSED LEVY AMOUNT, THE DISTRICT SHALL LEVY A  
36 PRIMARY PROPERTY TAX BASED ON THE PREVIOUSLY AUTHORIZED LEVY AND SHALL NOT  
37 RESUBMIT ANOTHER PROPOSED AMOUNT UNTIL AT LEAST TWO YEARS AFTER THE PROPOSED  
38 LEVY AMOUNT WAS DISAPPROVED.

39 ~~F.~~ G. This section does not apply to provisional community college  
40 districts formed pursuant to section 15-1409, except that the property tax  
41 oversight commission shall set a property tax levy limit that is not less  
42 than the amount required pursuant to section 15-1409, subsection C.



**RESOLUTION NO. 2013-03**

**RESOLUTION OF THE COUNCIL OF THE CITY OF FLAGSTAFF, ARIZONA,  
SUPPORTING HOUSE BILL 2498, *PROPERTY TAX LEVY; COMMUNITY  
COLLEGES***

**RECITALS:**

WHEREAS, the Flagstaff City Council is interested in the long-term financial stability and solvency of the Coconino Community College District; and

WHEREAS, continuing reduction in state support of the students at the College have negatively impacted the District's finances; and

WHEREAS, the property tax levies of the District are strictly limited by the Arizona Constitution and were established two decades ago based on financial and operating assumptions that have changed substantially over the years to meet the community's needs; and

WHEREAS, the Coconino Community College District currently has the lowest primary property tax revenue of any community college within the State and the lowest percentage of property tax contribution to total revenue, along with the highest tuition and fees of any of the accredited college districts, thereby risking the sustainability of the District; and

WHEREAS, the City Council believes that it is critical at this time to secure the District's financial future by increasing its property tax revenues; and

WHEREAS, HB2498 *Property Tax Levy; Community Colleges*, would authorize an election by the District to allow its voters to permanently increase its property tax revenues.

**ENACTMENTS:**

**NOW, THEREFORE, BE IT RESOLVED THAT THE COUNCIL OF THE CITY OF FLAGSTAFF, ARIZONA** does hereby support HB2498 *Property Tax Levy; Community Colleges*, and encourages its passage by the Arizona State Legislature.

PASSED AND ADOPTED by the City Council of the City of Flagstaff this 5th day of February, 2013.

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MAYOR

ATTEST:

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CITY CLERK

APPROVED AS TO FORM:

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CITY ATTORNEY

**CITY OF FLAGSTAFF**  
**STAFF SUMMARY REPORT**

**To:** The Honorable Mayor and Council  
**From:** Brian Grube, Recreation Services Director  
**Date:** 01/30/2013  
**Meeting Date:** 02/05/2013



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**TITLE:**

**Consideration and Adoption of Resolution No. 2013-02:** A Resolution of the City Council of the City of Flagstaff designating the "2013 City of Flagstaff Parks and Recreation Organizational Master Plan" as a public record and adopting the 2013 City of Flagstaff Parks and Recreation Organizational Master Plan.

**RECOMMENDED ACTION:**

Should the Council wish to move forward with adoption of the 2013 City of Flagstaff Parks and Recreation Organizational Master Plan as presented:

- 1) Read Resolution No. 2013-02 by title only.
- 2) Adopt Resolution No. 2013-02.

**Policy Decision or Reason for Action:**

Adoption of Resolution No. 2013-02 designates the 2013 City of Flagstaff Parks and Recreation Organizational Master Plan as a public record and adopts the Plan, which establishes guidelines, standards and recommendations for parks and recreation for the next 10 years. The Plan establishes direction to guide City staff, advisory committees, and elected officials in their efforts to enhance the community's parks and recreation services and facilities.

**Financial Impact:**

There is no financial impact to adopting the Resolution.

**Connection to Council Goal:**

Fund existing and consider expanded recreational services. The Parks and Recreation Organizational Master Plan process is a vital component of local government operations. Its purpose is to assess the current state of affairs regarding the provision of municipal parks and recreation services, stimulate an open public discussion of future needs for municipal parks and recreation programs, services, areas and facilities, and establish a plan of action for the future growth and development of municipal parks and recreation services. The end product of the Master Plan process provides the City a viable blueprint and plan of action to guide the future orderly growth and development of the community comprehensive parks and recreation system.

**Has There Been Previous Council Decision on This:**

On June 5, 2012 Council directed staff to bring the Plan back to Council to review chapter by chapter in order to thoroughly understand and analyze the document.

**Options and Alternatives:**

- A. Adopt Resolution No. 2013-02, approving the Parks and Recreation Organizational Master Plan
- B. Adopt a modified version of Resolution No. 2013-02
- C. Do not adopt Resolution No. 2013-02

**Background/History:**

Currently, the strategic planning document for parks and recreation is the 1996 Long Range Master Plan for Parks, Recreation and Open Spaces. This document was designed to span a ten (10) year time frame which has passed and is outdated in its usefulness other than as a historic framework. The City has grown, the community needs have changed, financial forecasting and service standards have evolved, stakeholders have increased, trends have emerged, and existing conditions have been impacted by all of the above. The City needed to identify current resources and project future demand in order to plan for a diverse parks and recreation system including facilities, services, and programs.

**Key Considerations:**

The new Plan is organized as a reference document for the City of Flagstaff community, the City of Flagstaff Recreation Services Division, Park Maintenance Section, City of Flagstaff elected and appointed officials, and other City Divisions. The first section of the Plan provides background data and a description of the Master Plan process and community engagement activities that were conducted during the development of this Plan. The first three chapters include information about the Plan and planning process. The Plan Vision is located in Chapter Four. Chapters Five through Eleven provide an overview, analysis and goals and strategies for parks, programs, events, facilities, maintenance and funding. Plan action strategies are organized into three groups:

- (1) those that could be implemented in a reduced budget scenario
- (2) those that could occur with no change in funding; and,
- (3) those that could occur in an enhanced funding scenario.

Supporting documents--documents incorporated by reference and areas addressed by other plans and entities (including open space and trails)--are discussed in Appendix A. A description of the planning process, the outreach efforts, including a community survey and benchmarking, is included in Appendix B of the Plan.

Changes to the Master plan as a result of the Council work session reviews are summarized in the attachment titled "Work session changes to the Parks and Recreation Master Plan 2013."

**Community Benefits and Considerations:**

Community Benefits and Considerations. With the increasing recognition of the many benefits derived from outdoor recreation, organized sports and leisure activities, and natural open spaces within the community, Flagstaff recognizes the need for enhancing both the quantity and quality of recreation opportunities for people of all ages and abilities. Past master planning efforts have shown three main goals: (1) to provide parks, recreation facilities and open spaces through public and private resources which become the foundation of community pride; (2) to provide residents with active and passive recreational opportunities by maximizing the use of dedicated parks, recreation facilities, and open spaces; and, (3) to promote habits of activity for a stronger, healthier community through offering recreation programs and services which encourage residents and visitors alike to lead balanced lives.

**Community Involvement:**

A variety of community participation opportunities, including public open houses, surveys, outreach materials, focus groups, and stakeholder meetings, allowed for significant community involvement and input into the plan. Over the two-year period of this master planning effort, continued public involvement was the key to maintaining the support of the community and ensuring their desires were reflected in the plan. The following public involvement forums were conducted throughout this process for the public to provide ideas and comments:

- 2 Community Meetings/Workshops (2011)
- Benchmark Survey (Winter/Spring 2012)
- Draft Plan available for review (Dec 2011 -Jan 2012)
- Parks and Recreation Commission (5 Meetings 2010-2012)
- City Council (2 Meetings 2011 - 2012)
- Disability Awareness Commission (2011)
- Open Space Commission (2011)
- City-sponsored web page with feedback form
- Chapters reviewed at City Council work sessions (5 meetings September 2012 – January 2013)

**Council Action:**

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**Attachments:**     Res. 2013-02  
                             Work session changes to P&R Master Plan

## **RESOLUTION NO. 2013-02**

### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF DESIGNATING THE “2013 CITY OF FLAGSTAFF PARKS AND RECREATION ORGANIZATIONAL MASTER PLAN” AS A PUBLIC RECORD AND ADOPTING THE 2013 CITY OF FLAGSTAFF PARKS AND RECREATION ORGANIZATIONAL MASTER PLAN**

#### **RECITALS:**

WHEREAS, the primary goal of the Parks and Recreation Organizational Master Plan is to provide for a viable blueprint and plan of action to guide the future orderly growth and development of the community's comprehensive parks and recreation system for the citizens of Flagstaff, Arizona; and

WHEREAS, the Flagstaff City Council recognizes the need for a Parks and Recreation Organizational Master Plan to provide goals, needs assessments, standards, recommendations, and strategies for implementation over a ten-year period in an effort to provide for, and continually improve, park and recreational facilities, programs, and services; and

WHEREAS, in collaboration with Flagstaff's citizens and after considerable analysis and study, staff and consultants have prepared the Parks and Recreation Organizational Master Plan document; and

WHEREAS, the Parks and Recreation Commission has been involved with the preparation of the Parks and Recreation Organizational Master Plan and recommends its adoption as a guide for existing and future citizens of the City of Flagstaff, Arizona; and

WHEREAS, having taken into consideration the desires of the citizens of Flagstaff and the in-depth study conducted by the staff and consultants, the City Council concludes that its recommendations are appropriate and reasonable; and

WHEREAS, three copies of the City of Flagstaff Parks and Recreation Organizational Master Plan have been placed on file with the City Clerk so that the official copies thereof shall be readily available to the public.

#### **ENACTMENTS:**

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FLAGSTAFF, COCONINO COUNTY, ARIZONA, AS FOLLOWS:**

Section I. That the 2013 City of Flagstaff Parks and Recreation Organizational Master Plan, three copies of which are on file in the City Clerk's Office and attached hereto, is hereby declared to be a public record.

Section II. That the 2013 City of Flagstaff Parks and Recreation Organizational Master Plan is intended to provide ongoing guidance to the City Council and the City of Flagstaff staff for comprehensive strategic planning of parks and recreational facilities, programs, and services for its citizens.

Section III. That the Parks and Recreation Commission has prioritized parks and recreation unfunded capital improvement projects in order to guide and plan for future development and acquisition with the list as follows:

- Westside Parkland Acquisition
- Competitive Lap Pool
- Bushmaster Park Improvements
- Enclosed Tennis Structure/Bubble
- Continental Park Improvements, Phase I
- Wheeler Park Redesign, Phase I
- Christensen Park Development/Soccer Fields

Section IV. That the Flagstaff City Council hereby adopts the 2013 City of Flagstaff Parks and Recreation Organizational Master Plan.

PASSED AND ADOPTED by the City Council and approved by the Mayor of the City of Flagstaff this 5<sup>th</sup> day of February, 2013.

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MAYOR

ATTEST:

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CITY CLERK

APPROVED AS TO FORM:

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CITY ATTORNEY

# City of Flagstaff Parks And Recreation Organizational Master Plan

## Council Worksession Comment Tracking

Chapter	Strategy	Comment:	Changed to read (changes in <i>red italics</i> ):
Parks	A.1.1.2	Selling or repurposing of existing parks, particularly the two acres or less, was a concern as many are located in areas needing the facilities. Infill was being encouraged in older neighborhoods and there may not be enough room for larger parks, but they were still needed. Communication with affected neighborhoods should take place if such sale or repurpose was proposed. Clearer articulation within the document on this subject should be made.	<b>Reduced Strategy:</b> Consider reducing Neighborhood/Pocket park inventory in some areas in keeping with minimum Neighborhood park service area standard of 1/3 mile. <i>In making any decisions regarding reducing pocket or neighborhood parks, consider if these parks will be needed due to future infill, economics, or other considerations. Work closely with neighborhoods regarding any decisions regarding repurposing neighborhood parks.</i>
Parks	A.1.4.1	Concern was voiced with having a Regional Park at Lake Mary when the County already had a Regional Park at Fort Tuthill. It was noted that there would not be duplication of amenities; they would offer different services, such as fields at Lake Mary. Additionally, the City staff has been working with County staff through this process.	<b>Reduced Strategy:</b> Consider working with private entities to develop Lake Mary Park as a Regional fee-for-use park <i>with facilities that do not duplicate those at Fort Tuthill Park, or that are needed in addition to facilities at Fort Tuthill Park.</i> <b>Baseline Strategy:</b> Development of Lake Mary Park by 2030 <i>with facilities that do not duplicate those at Fort Tuthill Park, or that are needed in addition to facilities at Fort Tuthill Park.</i> <b>Enhanced Strategy:</b> Development of Lake Mary Park by 2030 <i>with facilities that do not duplicate those at Fort Tuthill Park, or that are needed in addition to facilities at Fort Tuthill Park.</i>



## City of Flagstaff Parks And Recreation Organizational Master Plan Council Worksession Comment Tracking

Programs and Fee Philosophy:	A.1.2.5	Private maintenance of some parks. This was problematic; there needs to be some type of mechanism for the City to facilitate maintenance.	Require new developments to provide land or funds for the purchase, development and maintenance of Community parks lands in accordance with the standards of this Plan <i>and in accordance with a city monitored maintenance plan.</i>
	A.6.1.2	With the specialized indoor facilities and charging a fee for use, they need to keep in mind that some of these facilities are paid for with bond monies, and they should be mindful that all people have access to the facilities that they pay for already.	<p><b>Reduced:</b> Establish an aggressive fee policy for the Division <i>that is mindful of bond funding that was contributed by taxpayers towards construction of facilities and</i> ensures operating costs are covered for programs and services, facility usage, and rentals.</p> <p><b>Baseline:</b> Establish a comprehensive fee policy for the Division that <i>that is mindful of bond funding that was contributed by taxpayers towards construction of facilities and covers</i> programs and services, facility usage, and rentals. This policy should be reviewed and update at least every other year.</p>
	Page 81 (General Fee Guidelines), 4 <sup>th</sup> bullet	Page 81 referenced the 50% cost recovery for youth and seniors. Staff noted there was a fee philosophy that the City would subsidize 50% for youth and they were now recommending to include seniors in that group, with all adult services having cost recovery at 100%. It was suggested that this be noted in the Plan.	Senior activities, programs and facility access should be priced similar to youth. <i>Currently the city subsidizes youth programs at 50%. Seniors should be added to this group.</i>
Events	A.2.1.1	Additionally, with marketing Buffalo Park for things such as	<b>Baseline:</b> Consider advertising Buffalo and McPherson Park as locations for

## City of Flagstaff Parks And Recreation Organizational Master Plan Council Worksession Comment Tracking

		weddings and reunions, they were not sure that the public reserved those parks for those kinds of functions, but they need to maintain the open space of the park and not cut off access.	family celebrations such as weddings and reunions. <i>Provide opportunities for these events while providing public access to larger open space areas that are a part of these parks.</i>
Maintenance	A.1.1.5, Reduced, Baseline and Enhanced strategies added	Discussion was held on the reduced maintenance in the undeveloped portions of parks. It was suggested that wording be included within the Plan to indicate that those areas would be addressed on a complaint-driven basis.	Maintain the undeveloped areas of Buffalo Park and natural open space at McPherson and Thorpe Parks in accordance with NRPA Level 6 Standards <i>and on a complaint driven basis.</i>
Maintenance	A.2.4.1	Council requested that a numbering system similar to what is used for park maintenance be assigned to the recreation facilities and services. The numbering system helps to put into perspective the areas that need improvement.	<p><b>Reduced:</b> <i>Develop facilities maintenance standards, modeled on those used for parks maintenance, that ensure facilities are maintained to be safe and enjoyable and encourage partnerships with other entities to maintain facilities to the greatest extent possible.</i></p> <p><b>Baseline and Enhanced:</b> <i>Develop facilities maintenance standards, modeled on those used for parks maintenance, that ensure facilities are maintained to be safe and enjoyable.</i></p>
Finance	A.1.1.1	Replace existing strategy.	<i>Take BBB parks to a service level 2, no FUTS construction, keep recreation programming.</i>

## **CITY OF FLAGSTAFF**

### **STAFF SUMMARY REPORT**

**To:** The Honorable Mayor and Council  
**From:** Patrick Brown, Senior Procurement Specialist  
**Co-Submitter:** Patrick Bourque, Public Works Section Head  
**Date:** 01/30/2013  
**Meeting Date:** 02/05/2013



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#### **TITLE:**

**Consideration of Proposals:** Public Works Municipal Services Center Property (aka Core Services Maintenance Facility).

#### **RECOMMENDED ACTION:**

Accept or reject proposals as submitted for Request for Proposals (RFP) 2012-49, property for a new Public Works Municipal Services Center

#### **Policy Decision or Reason for Action:**

Only one proposal was received for this procurement. Staff was unable to negotiate a successful agreement with the proposer; therefore, staff recommends that all proposals submitted be rejected.

#### **Financial Impact:**

Due diligence investment in proposer's property was \$38,396.

#### **Connection to Council Goal:**

Maintain and deliver quality, reliable infrastructure: address the need for a Core Services maintenance facility

#### **Previous Council Decision on This:**

No

#### **Options and Alternatives:**

Reject the proposal as submitted

Reject the proposal as submitted and re-solicit

Reject the proposal as submitted and revisit all options, including re-solicit and/or re-evaluate other City-owned property

Accept the proposal and continue to negotiate with the proposer

**Background/History:**

The existing Core Services maintenance facility is located at 419 N. Mogollon in Flagstaff. This facility was originally built by a bond approved by the voters in the late 1940's. Over the years, there have been numerous structures built on this property as growth dictated. The existing facility is no longer adequate to maintain the numerous vehicles and equipment necessary to provide core services to the public. A new facility would give capacity and also provide an indoor space for all fleet maintenance repairs, some of which are currently performed outdoors in the inclement weather, including snow.

The City has been in need of a new Core Services maintenance facility for many years. The City has outgrown the existing facility and core service operations are scattered throughout the City. In 2010, Council approved a bond initiative to construct a new facility at McAllister Ranch located on West Route 66. The bond question requested authority from the public to use bonding capacity of \$42 million to build the new facility, which included all new infrastructure (e.g. water, sewer, electricity, as well as Route 66 road improvements for traffic flow). This authority was not approved by the voters. At the April 2012 Budget retreat the project was discussed and Council approved setting budget authority for the upcoming bond vote. The Council then voted on July 17, 2012 to approve the measure for a November 2012 bond election through Resolution 2012-30.

In May 2012, the City conducted a Request For Proposals (RFP), and one (1) proposal response was submitted by F.W. Thompson. The RFP outlined five (5) evaluation criteria as follows: Location (2%), Quality of on-site infrastructure of utilities and roadways (20%), Usable existing facilities that would interact with the Public Works function (20%), Possible phased approach to purchase land (10%), and Possible purchase of current City-owned property (30%). After evaluation of the proposal submitted by F.W. Thompson, the City began negotiating purchase terms.

On November 4, 2012, voters approved the bond initiative authorizing \$14,000,000 of bond sales to fund a new facility. As a result of complex and lengthy negotiations prior and subsequent to the bond election, the City and F.W. Thompson were unable to come to an acceptable mutual agreement. The City's RFP contains language allowing the City to reject any or all Offers, or portions thereof; or cancel and reissue an RFP.

**Key Considerations:**

Rejecting the FW Thompson proposal will allow the City to consider other options:

- (1) Re-issue an RFP solicitation that will give the City an opportunity to seek and receive competitive proposals from interested property owners within the allocated budget and voter-approved bond;
- (2) Revisit the use of other City-owned property for the facility; or,
- (3) Consider direct sale or other proposals from governmental entities that may have an interest or wish to pursue partnership opportunities that mutually serve the public interests.

**Community Benefits and Considerations:**

The community could benefit from a potential savings in City funds being spent on the best value for the best price through consideration of other properties since negotiations on the only formal proposal received were unable to be concluded in the best interest of the public.

**Council Action:**

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**Attachments:**

**CITY OF FLAGSTAFF  
STAFF SUMMARY REPORT**

**To:** The Honorable Mayor and Council  
**From:** Elizabeth A. Burke, City Clerk  
**Date:** 01/30/2013  
**Meeting Date:** 02/05/2013



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**TITLE**

**Discussion and Possible Action Item:** Arizona Accord.

**RECOMMENDED ACTION:**

Council direction

**INFORMATION**

Vice Mayor Evans has requested that this issue, the Arizona Accord, be added to the Discussion section of an agenda to determine if there is a majority of Council members interested in placing this item on a future agenda for further discussion and possible action.

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**Attachments:** Possible Wording  
Information

**From:** [Coral J. Evans, MBA](#)  
**To:** [Elizabeth Burke](#)  
**Subject:** Possible Wording for the AZ Accord Resolution  
**Date:** Monday, January 28, 2013 12:54:20 PM  
**Importance:** High

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Hello Liz.

Below is what I am proposing as wording for the proposed AZ Accord Resolution;

Thanks!

Coral

### **Possible wording for City of Flagstaff Arizona Accord Resolution**

**The Flagstaff City Council supports in general the basic principles at outlined in the Arizona Accord. The Arizona Accord is a simple declaration of five broad principles meant to guide policymakers at both the state and, more importantly, national level. We believe these principles can act as guardrails to the crafting and passage of legislation and regulations related to immigration and will provide a foundation for policymakers and the community as a whole to engage in a more civil and effective dialogue when confronting matters of immigration and a broken federal system.**

Section 15 Item to be presented by  
Council member Coral J. Evans, MBA  
May 22<sup>nd</sup>, 2012

## **Resolution in Support of the Arizona Accord**

### **OVERVIEW STATEMENT**

As a border state, Arizona faces issues related to immigration not found in a majority of other states. Because of this, Arizona over the past several years has become the central battleground for controversial immigration measures which generated additional concerns and impacts on Arizona and negatively affected our state's reputation and image on the national stage.

The level of acrimony within the public discourse has made it nearly impossible for a realistic approach and solution to be found. There have been unfounded and rampant accusations on both sides of the aisle. This lack of reasonable and constructive discussions in matters related to immigration has prevented policymakers from reaching realistic and holistic solutions.

The Arizona Accord is a simple declaration of five broad principles meant to guide policymakers at both the state and, more importantly, national level. We believe these principles can act as guardrails to the crafting and passage of legislation and regulations related to immigration and will provide a foundation for policymakers and the community as a whole to engage in a more civil and effective dialogue when confronting matters of immigration and a broken federal system.

### **THE ARIZONA ACCORD (IN ITS ENTIRETY)**

**FEDERAL SOLUTIONS** Immigration is a federal policy issue between the U.S. government & other countries, not Arizona and other countries. We urge Arizona's congressional delegation, and others, to lead efforts to strengthen federal laws and protect our national borders. We urge state leaders to adopt reasonable policies addressing immigrants in Arizona.

**LAW ENFORCEMENT** We respect the rule of law & support law enforcement's professional judgment and discretion. Local law enforcement resources should focus on criminal activities, not civil violations of federal code.

**FAMILIES** Strong families are the foundation of successful communities. We oppose policies that would unnecessarily separate families. We champion policies that support families and improve the health, education and well-being of all Arizona children.

**ECONOMY** Arizona is best served by a free-market philosophy that maximizes individual freedom and opportunity. We acknowledge the economic role immigrants play as workers and taxpayers. Arizona's immigration policies must reaffirm our global reputation as a welcoming and business-friendly state.

**A FREE SOCIETY** Immigrants are integrated into communities across Arizona. We must adopt a humane approach to this reality, reflecting our unique culture, history & spirit of

inclusion. The way we treat immigrants will say more about us as a free society and less about our immigrant neighbors. Arizona should always be a place that welcomes people of goodwill.

## **CITIES/TOWNS/ORGANIZATIONS IN ARIZONA WHO SUPPORT THE ARIZONA ACCORD**

- Greater Phoenix Leadership (GPL)
- Greater Phoenix Economic Council (GPEC)
- Arizona Farm Bureau
- Western Growers
- Arizona Hispanic Chamber of Commerce
- Tucson Hispanic Chamber of Commerce
- Chicanos Por La Causa
- The Real Arizona Coalition
- Arizona Interfaith Network
  - Valley Interfaith Project
  - Northern Arizona Interfaith Council
  - Yuma County Interfaith Council
  - Pima County Interfaith Council
- City of Tucson
- City of Tolleson
- City of Mesa Human Relations Advisory Board
- City of Phoenix Human Relations Commission
- City of Tucson Human Relations Commission
- Arizona Employers for Immigration Reform
- Friendly House
- East Valley Patriots
- One Arizona Interfaith Leaders
- Promise Arizona
- Ironco Enterprises
- Sundt Construction
- McCarthy Construction
- Valle del Sol
- Farnsworth Companies
- Catholic Community Services of Southern Arizona
- Farmers Investment Co. (FICO)
- Members of the Board of Rabbis of Greater Phoenix

## **REQUEST**

I am requesting that the City of Flagstaff issue a non-binding resolution in support of the principles spelled out in the Arizona Accord.



**CITY OF FLAGSTAFF  
STAFF SUMMARY REPORT**

**To:** The Honorable Mayor and Council  
**From:** Elizabeth A. Burke, City Clerk  
**Date:** 01/30/2013  
**Meeting Date:** 02/05/2013



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**TITLE**

**Discussion and Possible Action Item:** City's Sister Cities Program and possible new city.

**RECOMMENDED ACTION:**

Council direction

**INFORMATION**

Vice Mayor Evans has requested that this item be placed on the Discussion section of an agenda to determine if a majority of the Council would like to place this item on a future agenda for discussion and possible action.

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**Attachments:**